

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

July 3, 2002

MERIT DECISIONS WITH OPINIONS

2000-2236. Kostelnik v. Helper, 2002-Ohio-2985.

Cuyahoga App. No. 76809. Judgment reversed and cause remanded.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., concur.

Cook, J., concurs in judgment.

Douglas, Resnick and F.E. Sweeney, JJ., concur in part and dissent in part.

2001-0694. GTE North, Inc. v. Zaino, 2002-Ohio-2984.

Board of Tax Appeals, No. 98-P-893. Decision affirmed.

Moyer, C.J., Douglas, Handwork, F.E. Sweeney and Pfeifer, JJ., concur.

Cook, J., concurs in judgment.

Lundberg Stratton, J., dissents.

Peter M. Handwork, J., of the Sixth Appellate District, sitting for Resnick, J.

2001-2203. Cleveland Bar Assn. v. Frazier, 2002-Ohio-2994.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 00-102.

Arthur Ray Frazier is indefinitely suspended from the practice of law.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

2002-0296. Disciplinary Counsel v. Cox, 2002-Ohio-2989.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 00-92.

Edward A. Cox is indefinitely suspended from the practice of law.

Moyer, C.J., Resnick, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

Douglas and F.E. Sweeney, JJ., dissent.

2002-0315. Dayton Bar Assn. v. Sebree, 2002-Ohio-2987.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 01-58.

Ronald H. Sebree is suspended from the practice of law for six months, stayed with conditions.

Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

Moyer, C.J., dissents.

2002-0317. Cleveland Bar Assn. v. Morrison, 2002-Ohio-2991.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 01-73.

Harvey S. Morrison is suspended from the practice of law for six months, stayed.

Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

Moyer, C.J., dissents.

2002-0325. Disciplinary Counsel v. Lombardi, 2002-Ohio-2990.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 01-37.

Marcus M. Lombardi is suspended from the practice of law for two years with eighteen months stayed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney and Lundberg Stratton, JJ., concur.

Pfeifer, J., dissents.

Cook, J., not participating.

2002-0331. Disciplinary Counsel v. Detty, 2002-Ohio-2992.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 01-71.

John Detty is suspended from the practice of law for six months, stayed.

Douglas, Resnick, F.E. Sweeney and Lundberg Stratton, JJ., concur.

Moyer, C.J., Pfeifer and Cook, JJ., dissent.

MERIT DECISIONS WITHOUT OPINIONS

2002-0219. Krejsa v. Delaware Cty. Bd. of Revision.

Board of Tax Appeals, No. 2000-B-886. On motion to dismiss of Board of Education of the Olentangy Local School District. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

2002-0619. State ex rel. Schwartzman v. Evendale.

In Mandamus. On S.Ct.Prac.R. X(5) determination, respondents' motion for summary judgment, motion of amicus curiae the Ohio Municipal League for leave to file a brief in support of respondents' motion for summary judgment, and relators' motion to strike respondents' motion for summary judgment and supporting papers,

IT IS ORDERED that relators' motion be, and hereby is, granted, and that respondents' motion for summary judgment and supporting evidence be, and hereby is, stricken.

IT IS FURTHER ORDERED that the motion of amicus curiae the Ohio Municipal League to file a brief in support of respondents' motion for summary judgment be, and hereby is, denied.

IT IS FURTHER ORDERED upon our S.Ct.Prac.R. X(5) determination, that the cause be, and hereby is, dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

Douglas, J., not participating.

2002-0715. Burkhart v. CNA Ins. Co.

Stark App. No. 2001CA00265, 2002-Ohio-903. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). This cause is therefore dismissed.

Moyer, C.J., Douglas, Resnick, Pfeifer and Cook, JJ., concur.

F.E. Sweeney and Lundberg Stratton, JJ., dissent.

2002-0723. State ex rel. Cripps v. Twelfth Dist. Court of Appeals.

In Procedendo. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

2002-0735. State ex rel. Troutman v. Nabakowski.

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg
Stratton, JJ., concur.

2002-0756. McKinney v. Williams.

In Procedendo. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg
Stratton, JJ., concur.

2002-0768. State ex rel. Thomas v. First Dist. Court of Appeals.

In Procedendo. On complaint in procedendo of Anthony Thomas. On S.Ct.Prac.R. X(5) determination, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg
Stratton, JJ., concur.

2002-0822. Watson v. Marshall.

In Prohibition. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg
Stratton, JJ., concur.

2002-0853. State ex rel. Price v. Rose.

In Habeas Corpus. On petition for writ of habeas corpus of Oliver C. Price. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg
Stratton, JJ., concur.

2002-0866. Allen v. State.

In Habeas Corpus. On petition for writ of habeas corpus of Cecil Allen. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg
Stratton, JJ., concur.

MOTION AND PROCEDURAL RULINGS

2001-0096. Sain v. Roo. [Reporter's Note: For corrected entry, see 96 Ohio St.3d ____, 2002-Ohio-3470, ____, N.E.2d ____.]

Franklin App. No. 99AP-1459. On motion for relief from the sanctions judgment and order. Motion denied.

Cook, J., would strike the motion.

On motion to strike, or in the alternative, memo opposing the motion for relief from the sanctions judgment and order. Motion denied.

Pfeifer and Cook, JJ., dissent.

On motion for sanctions for frivolous action against K.Z. Roo and attorneys Sarah Morrison and Guy Humphrey. Motion granted.

Pfeifer and Cook, JJ., dissent.

2001-0315. State ex rel. Ohio Aluminum Industries v. Conrad.

Franklin App. No. 99AP-1060. On request for oral argument. Request denied.

2001-0458. State ex rel. M. Weingold & Co. v. Indus. Comm.

Franklin App. No. 00AP-317. On request for oral argument. Request denied.

2001-2036. Ohio State Bldg. & Constr. Trades Council v. Cuyahoga Cty. Bd. of Commrs.

Cuyahoga App. Nos. 77242 and 77262, 2001-Ohio-4228. On motion to strike material from the appendix of the brief of Ohio Associated Builders & Contractors, Inc. of OSB&CTC. Motion granted.

Moyer, C.J., and Pfeifer, J., dissent.

Lundberg Stratton, J., votes that the motion was withdrawn.

2002-0097. Sisson v. Lawrence.

Board of Tax Appeals, No. 99-L-1352. On motion for stay of judgment entry issued May 1, 2002, pursuant to Civ.R. 62(A). Motion denied.

2002-0415. State ex rel. Pepple v. Montgomery.

In Prohibition and Mandamus. On consideration of joint motions of respondents Alesnik, Blaskis, Hynd, and Ohio Campaign for New Drug Policies to strike portions of relator's memorandum contra their motions to dismiss and for sanctions,

IT IS ORDERED that the motions be, and hereby, are denied.

2002-0865. State v. Mootoosammy.

Medina App. No. 3269-M. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2002-0877. State v. Townsend.

Montgomery App. No. 18670, 2001-Ohio-1485. On motion for leave to file delayed appeal. Motion denied.

2002-0878. State v. Stiggers.

Summit App. No. 20028. On motion for leave to file delayed appeal. Motion denied.

2002-0881. State v. Wells.

Cuyahoga App. No. 79893, 2002-Ohio-1413. On motion for leave to file delayed appeal. Motion granted.

Resnick and F.E. Sweeney, JJ., dissent.

2002-0891. State v. Jewell.

Delaware App. No. 01CAA03006, 2002-Ohio-226. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2002-0895. Brady v. Brady.

Montgomery App. No. 19006, 2002-Ohio-1879. On motion for stay of court of appeals' judgment. Motion denied.

2002-0901. State v. Allen.

Cuyahoga App. No. 76672. On motion for leave to file delayed appeal. Motion denied.

Douglas and Lundberg Stratton, JJ., dissent.

2002-0921. Lawyers Title Ins. Corp. v. Midwest Title Agency, Inc.

Delaware App. Nos. 01CAE10046 and 01CAE11059. On motion for immediate stay of court of appeals' judgment. Motion granted.

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

2002-0976. State v. Baker.

Cuyahoga App. No. 81053. On motion for appeal bond with expedited consideration. Motion denied.

2002-0984. Boshier v. Euclid Income Tax Bd. of Review.

Cuyahoga App. No. 80240, 2002-Ohio-2671. On motion for immediate stay of court of appeals' judgment and on motion for immediate stay of court of appeals' judgment. Motions granted.

Pfeifer, J., dissents.

2002-1009. State v. Fitzgerald.

Summit App. No. 20866, 2002-Ohio-2903. On motion for stay of lower court's decision. Motion granted.

Pfeifer and Lundberg Stratton, JJ., dissent.

APPEALS ACCEPTED FOR REVIEW

2002-0505. Mattox v. Allstate Ins. Co.

Stark App. No. 2001CA218, 2002-Ohio-1453. Appeal allowed and cause held for the decision in 2001-1786, *Lemm v. The Hartford*, Franklin App. No. 01AP-251; brief schedule stayed.

Lundberg Stratton, J., dissents.

2002-0545. State v. Butler.

Stark App. No. 2001CA00069, 2002-Ohio-774.

Douglas, Pfeifer and Cook, JJ., dissent.

2002-0551. Keller v. Columbus.

Franklin App. No. 01AP-1045, 2002-Ohio-622. Appeal allowed.

F.E. Sweeney, Pfeifer and Cook, JJ., dissent.

Cross-appeal allowed.

F.E. Sweeney and Cook, JJ., dissent.

2002-0579. Burkhart v. CNA Ins. Co.

Stark App. No. 2001CA00265, 2002-Ohio-903.

Pfeifer and Cook, JJ., dissent.

APPEALS NOT ACCEPTED FOR REVIEW

2002-0286. State v. Hanna.

Warren App. No. CA2001-04-032, 2001-Ohio-8623.

2002-0518. Standen v. Smith.

Lorain App. No. 01CA007886, 2002-Ohio-760.

2002-0519. Shell v. Cryer.

Lake App. No. 2001-L-083, 2002-Ohio-848.

2002-0522. Vukovich v. Hutzler.

Summit App. No. 20727, 2002-Ohio-1117.

2002-0526. State v. Hitchcock.

Cuyahoga App. No. 80660.

2002-0529. State v. Pierce.

Cuyahoga App. No. 79376, 2002-Ohio-652.

Lundberg Stratton, J., dissents.

2002-0532. Poorman v. Ohio Adult Parole Auth.

Pickaway App. No. 01CA16, 2002-Ohio-1059.

2002-0544. In re Estate of Clark.

Montgomery App. No. 18857, 2002-Ohio-913.

Pfeifer and Cook, JJ., dissent.

2002-0548. State v. Szerlip.

Knox App. No. 01CA05, 2002-Ohio-900.

2002-0561. State v. Reed.

Franklin App. No. 01AP-247, 2002-Ohio-680.

2002-0563. Bohaty v. Centerpointe Plaza Assoc., L.P.

Medina App. No. 3143-M, 2002-Ohio-749.

2002-0570. State v. Jones.

Franklin App. No. 01AP-649, 2002-Ohio-880.

2002-0572. State v. Williams.

Hamilton App. No. C-010374.

2002-0577. Hebert v. Canton.

Stark App. No. 2001CA00281, 2002-Ohio-906.

2002-0578. Nationscredit Fin. Serv. Corp. v. Wagner.

Allen App. No. 10-11-38, 2002-Ohio-700.

2002-0586. State v. Bevins.

Hamilton App. Nos. C-010316 and C-010317, 2002-Ohio-1975.

2002-0591. Norris v. Horowitz.

Stark App. No. 2001CA00229, 2002-Ohio-999.

2002-0594. Kaiser v. Thomas.

Hamilton App. No. C-010066.

2002-0599. State v. Reese.

Clark App. No. 2001CA48, 2002-Ohio-937.

2002-0601. State v. Paul.

Cuyahoga App. No. 79596, 2002-Ohio-591.

2002-0605. Diamond v. Creager.

Montgomery App. No. 18819, 2002-Ohio-916.

2002-0607. State v. Drake.

Lorain App. No. 01CA007885, 2002-Ohio-817.

Moyer, C.J., and Cook, J., dissent.

2002-0608. State v. Flowers.

Franklin App. No. 01AP-722, 2002-Ohio-833.

2002-0611. State v. Steward.

Richland App. No. 01CA55, 2002-Ohio-993.

2002-0615. State v. Bogle.

Montgomery App. No. 18722, 2001-Ohio-1455.

2002-0621. State v. Jalowiec.

Lorain App. Nos. 01CA007844 and 01CA007847, 2002-Ohio-949.

2002-0622. Creed v. B & L Co.

Hamilton App. No. C-010097.

2002-0627. State v. Parker.

Mahoning App. No. 92CA135, 2002-Ohio-1151.

2002-0635. In re Vinson.

Franklin App. No. 01AP-752, 2002-Ohio-1010.

Pfeifer, J., dissents.

2002-0637. State v. Francis.

Guernsey App. No. 01CA05, 2002-Ohio-990.

Pfeifer, J., dissents.

2002-0638. State v. Clemons.

Hamilton App. No. C-010487.

2002-0639. State v. Gary.

Cuyahoga App. No. 79224, 2002-Ohio-588.

2002-0640. A.E.R., L.P. v. Huron Cty. Bd. of Commrs.

Huron App. No. H-01-046.

Resnick, J., not participating.

2002-0642. State v. Saxton.

Marion App. No. 9-2000-88, 2002-Ohio-1024.

2002-0643. Gargallo v. Nationwide Mut. Ins. Co.

Franklin App. No. 01AP-710, 2002-Ohio-1009.

2002-0646. Lorence v. Goeller.

Lorain App. No. 01CA007820, 2002-Ohio-948.

2002-0649. State v. Philpott.

Cuyahoga App. No. 79732, 2002-Ohio-808.

Moyer, C.J., dissents.

2002-0650. Cleveland v. Cleveland Police Patrolmen's Assn.

Cuyahoga App. No. 80201.

2002-0654. King v. King.

Adams App. No. 01CA719, 2002-Ohio-1060.

Resnick, J., dissents.

2002-0655. Toledo v. Diefenbaugh.

Lucas App. No. L-01-1327, 2002-Ohio-1182.

Resnick, J., not participating.

2002-0656. State v. Thrower.

Summit App. No. 20615, 2002-Ohio-1116.

2002-0669. Collins v. Hamilton Cty. Dept. of Human Serv.

Franklin App. No. 01AP-1194, 2002-Ohio-1325.

2002-0670. State v. Black.

Stark App. Nos. 1999CA00185 and 2002CA00002.

2002-0676. State v. Beranek.

Lucas App. No. L-99-1173.

Resnick, J., not participating.

2002-0684. State v. Roley.

Hamilton App. No. C-000787.

2002-0687. Concerned Citizens of Cent. Ohio v. Schregardus.

Franklin App. No. 01AP-765, 2002-Ohio-1074.

Lundberg Stratton, J., dissents.

2002-0696. State v. Rivera-Carrillo.

Butler App. No. CA2001-03-054, 2002-Ohio-1013.

Pfeifer and Lundberg Stratton, JJ., dissent.

2002-0705. State v. Spivey.

Mahoning App. No. 00CA106, 2002-Ohio-1149.

2002-0706. State v. Coker.

Cuyahoga App. No. 79869, 2002-Ohio-1071.

2002-0708. State v. Ahart.

Mahoning App. No. 93CA211, 2001-Ohio-3390.

Moyer, C.J., dissents, would allow the appeal, and would remand this cause for consideration of *State v. Parker*, 95 Ohio St.3d 524, 2002-Ohio-2833, 769 N.E.2d 846.

Pfeifer, J., dissents and would allow the appeal.

2002-0713. Konchar v. Aurora Manor L.P.

Portage App. No. 2001-P-0100.

2002-0733. Allen v. Allen.

Trumbull App. No. 2000-T-0137, 2002-Ohio-1167.

2002-0734. State v. Freeman.

Montgomery App. No. 18798, 2002-Ohio-918.

2002-0744. State v. Gillespie.

Montgomery App. No. 18852, 2002-Ohio-1774.

2002-0749. State v. Bruce.

Cuyahoga App. No. 70982.

2002-0762. State v. Fadis.

Franklin App. No. 01AP-865, 2002-Ohio-1349.

2002-0765. In re Hogan.

Allen App. No. 1-01-145, 2002-Ohio-1769.

Moyer, C.J., dissents.

2002-0770. In re Hauserman.

Cuyahoga App. Nos. 77235 and 77252, 2002-Ohio-1094.
Resnick, J., dissents.

2002-0773. State v. Bell.

Butler App. No. CA2001-08-197, 2002-Ohio-1341.

2002-0798. In re Cooper.

Cuyahoga App. No. 79899, 2002-Ohio-1656.

RECONSIDERATION OF PRIOR DECISIONS

1998-1983. State v. LaMar.

Lawrence App. No. 95CA31. Reported at 95 Ohio St.3d 181, 2002-Ohio-2128,
767 N.E.2d 166. On motion for reconsideration. Motion denied.

1999-0093. State v. Hanna.

Warren C.P. No. 98CR17677. Reported at 95 Ohio St.3d 285, 2002-Ohio-2221,
767 N.E.2d 678. On motion for reconsideration. Motion denied.

1999-0958. State v. Yarbrough.

Shelby App. No. 17-97-03. Reported at 95 Ohio St.3d 227, 2002-Ohio-2126, 767
N.E.2d 216. On motion for reconsideration. Motion denied.

2000-1812. State v. Maxwell.

Franklin App. No. 99AP-1177. Reported at 95 Ohio St.3d 254, 2002-Ohio-2121,
767 N.E.2d 242. On motion for reconsideration and motion to strike motion for
reconsideration for failure of service, S.Ct.Prac.R. XIV(2)(D)(1). Motions denied.

Cook and Lundberg Stratton, JJ., would grant leave to reply.

Pfeifer, J., dissents.

2000-2095. Yates v. Abbott Laboratories.

Franklin App. No. 00AP-37. Reported at 95 Ohio St.3d 142, 2002-Ohio-2003, 766
N.E.2d 956. On motion for reconsideration. The motion fails for want of four
votes on the following vote:

Moyer, C.J., Cook and Lundberg Stratton, JJ., vote no.

Douglas, F.E. Sweeney and Pfeifer, JJ., vote yes.

Resnick, J., not participating.

2000-2278. Bonacorsi v. Wheeling & Lake Erie Ry. Co.

Stark App. No. 1999CA00407. Reported at 95 Ohio St.3d 314, 2002-Ohio-2220, 767 N.E.2d 707. On motion for reconsideration, and in the alternative, for remand and to stay the mandate, and on motion to strike exhibits A, B and C attached to the motion for reconsideration. Motions denied.

Lundberg Stratton, J., would grant the motion for reconsideration.

Cook, J., not participating.

2002-0312. Shalkhauser v. Medina.

Medina App. Nos. 3238-M and 3249-M, 2002-Ohio-222. Reported at 95 Ohio St.3d 1465, 2002-Ohio-2354, 768 N.E.2d 657. On motion for reconsideration. Motion denied.

Cook, J., dissents and would allow the appeal on Propositions of Law Nos. I, II, and III.

Douglas and Pfeifer, JJ., dissent and would allow.

2002-0338. Goddard v. Children's Hosp. Med. Ctr.

Hamilton App. No. C-010150. Reported at 95 Ohio St.3d 1459, 2002-Ohio-2230, 767 N.E.2d 1177. On motion for reconsideration. Motion denied.

F.E. Sweeney, J., dissents.

2002-0617. State v. Witschi.

Morrow App. No. CA868. Reported at 95 Ohio St.3d 1457, 2002-Ohio-2230, 767 N.E.2d 1176. On motion for reconsideration. Motion denied.