

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

January 15, 2003

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### MERIT DECISIONS WITHOUT OPINIONS

**1992-2019. State v. Fox.**

Wood App. No. 90-WD-067. Original petition for a new sentencing hearing, motion for stay of execution, and request for oral argument. Petition dismissed, motion denied, and request denied.

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

**2002-1494. State ex rel. Talley v. Gorman.**

Montgomery App. No. 19172. IT IS HEREBY ORDERED that this appeal be dismissed sua sponte for lack of a final appealable order. See *State ex rel. Scruggs v. Sadler*, 97 Ohio St.3d 78, 2002-Ohio-5315, 776 N.E.2d 101.

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

**2002-1527. State ex rel. Bell v. Montgomery Cty. Bd. of Commrs.**

In Mandamus and Prohibition. On return to regular docket and respondent's answer and motion for judgment on the pleadings.

IT IS ORDERED that respondents' motion for judgment on the pleadings be, and hereby is, GRANTED, and that the cause be, and hereby is, DISMISSED.

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

**2002-1875. State ex rel. Levering v. Beal.**

In Mandamus. On motion to consolidate. Motion denied.

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

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

**2002-1876. State ex rel. Levering v. Cummin.**

In Mandamus. On motions to consolidate. Motions denied.

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

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

**2002-1884. State ex rel. Wente v. Cuyahoga Cty. Common Pleas Court.**

In Mandamus. On amended motion to dismiss. Amended motion to dismiss sustained. Cause dismissed.

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

**2002-1910. State ex rel. Harman v. Cacioppo.**

In Mandamus. On complaint in mandamus by Donald A. Harman.

On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

**2002-1992. State ex rel. Domyanich v. McKay.**

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

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

**2002-2027. Phillips v. Irwin.**

In Habeas Corpus. On petition for writ of habeas corpus of Betty J. Phillips.

Sua sponte, cause dismissed.

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

**MOTION AND PROCEDURAL RULINGS**

**2002-0585. Klein v. Leis.**

Hamilton App. Nos. C-020012, C-020013, C-020015 and C-020021, 146 Ohio App.3d 526, 2002-Ohio-1634. On motion for admission pro hac vice of Robert Dowlet and Stefan Tahmassebi by Walter J. Vogel and motion for admission pro hac vice of James H. Warner by Walter J. Vogel. Motions granted.

**2002-1557. State ex rel. Steelcraft Mfg. Co. v. Indus. Comm.**

Franklin App. No. 01AP-1271, 2002-Ohio-3778. On request for oral argument. Request denied.

**2002-1628. Topp v. Martin.**

In Quo Warranto. On bill and documentation in support of attorney fees of Gary L. Willen pursuant to the order of November 20, 2002, bill and documentation in support of attorney fees of John S. Campbell pursuant to the order of November 20, 2002, and bill and documentation in support of attorney fees of Judge William J. Martin pursuant to the order of November 20, 2002. Requests granted.

**2002-1844. State ex rel. The Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Cincinnati Bd. of Edn.**

In Mandamus. On S.Ct.Prac.R. X(5) determination and respondents' answer.

IT IS HEREBY ORDERED that relator's R.C. 149.351 civil-forfeiture claim be, and hereby is, DISMISSED.

IT IS FURTHER ORDERED that an alternative writ be, and hereby is, GRANTED on relator's R.C. 149.43 claim.

**2002-1851. State v. McHale.**

Montgomery App. No. 18963, 2002-Ohio-2373. On motion for leave to file delayed appeal. Motion denied.

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

**2002-1924. Daroczy v. Lantz.**

Franklin App. No. 02AP-31, 2002-Ohio-5417. On motion for stay of court of appeals' decision. Motion denied.

**2002-1958. White v. Am. Mfrs. Mut. Ins. Co.**

Montgomery App. No. 19206, 2002-Ohio-4125. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2002-0932, *Westfield Ins. Co. v. Galatis*, Summit App. No. 20784, 2002-Ohio-1502; briefing schedule stayed.

**2002-1984. In re Buechter.**

Miami App. No. 2002CA22, 2002-Ohio-5598. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 3 of the court of appeals' Decision and Entry dated November 8, 2002:

“The certified issue is whether a court has subject-matter jurisdiction to award retroactive child-support payments in a paternity action filed after the child has reached the age of majority.”

The conflict cases are *Snider v. Lillie* (1997), 131 Ohio App.3d 444, 722 N.E.2d 1036, and *In re Livingston* (1996), 115 Ohio App.3d 613, 685 N.E.2d 1285.

**2002-2015. State v. Weirtz.**

Delaware App. No. 02CAC06032, 2002-Ohio-5294. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 2 of the court of appeals’ Judgment Entry dated October 28, 2002:

“Does *State v. Homan* [2000], 89 Ohio St.3d 421, 2000-Ohio-212 [732 N.E.2d 952], preclude a law enforcement officer from testifying at trial regarding observations made during a defendant’s performance of nonscientific standardized field sobriety tests when those tests are not administered in strict compliance with the National Highway Traffic Safety Administration guidelines?”

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

O’Connor, J., not participating.

The conflict cases are *State v. Brandenburg*, Montgomery App. No. 18836, 2002-Ohio-912; *State v. Schmitt*, Mercer App. No. 10-01-16, 2002-Ohio-4615; and *State v. Pingor*, Franklin App. No. 01AP-302, 2001-Ohio-4088.

**2002-2043. State v. Curtis.**

Jefferson App. No. 01JE16, 2002-Ohio-3054. On motion for leave to file delayed appeal. Motion denied.

**2002-2069. Lake Land Emp. Group of Akron, LLC v. Columber.**

Summit App. No. 21084, 2002-Ohio-5551. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 2 of the court of appeals’ Journal Entry dated November 4, 2002:

“Is subsequent employment alone sufficient consideration to support a covenant-not-to-compete agreement with an at-will employee entered into after employment has already begun?”

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

The conflict cases are *Swagelok Co. v. Young*, 8th Dist. No. 78976, 2002-Ohio-3416, 2002 WL 1454058; and *Refrigeration, Air Conditioning & Heating, Inc. v. Maynard* (Jan. 18, 2000), 12th Dist. No. CA99-05-047, 2000 WL 36102.

**2002-2091. State v. Gorman.**

Hamilton App. No. C-840707. On motion for leave to file delayed appeal. Motion denied.

**2002-2096. Copeland & Brown Co., L.P.A. v. Darby.**

Hamilton App. No. C-010388. On motion for stay of court of appeals' judgment. Motion denied.

**2002-2102. State v. Paxton.**

Lorain App. No. 01CA007818, 2002-Ohio-221. On motion for leave to file delayed appeal. Motion denied.

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

**2002-2197. In re Williams.**

Geauga App. No. 2002-G-2454, 2002-Ohio-6588. On motion for stay of court of appeals' decision. Motion granted.

Pfeifer, Cook and O'Connor, JJ., dissent.

**2002-2199. In re Williams.**

Geauga App. No. 2002-G-2459, 2002-Ohio-6588. On motion for stay of court of appeals' decision. Motion granted.

Pfeifer, Cook and O'Connor, JJ., dissent.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2002-1307. State v. Purdy.**

Lake App. No. 2000-L-176, 2002-Ohio-2111.

**2002-1581. State v. Hirsch.**

Allen App. No. 1-02-53.

Lundberg Stratton, J., dissents.

**2002-1602. State v. Rogers.**

Van Wert App. No. 15-02-05.

**2002-1630. State v. Henderson.**

Cuyahoga App. No. 80618, 2002-Ohio-4022.

**2002-1631. State v. Longworth.**

Allen App. No. 1-02-28, 2002-Ohio-4602. Appeal not allowed and motions for summary judgment denied.

**2002-1633. State v. Blaylock.**

Cuyahoga App. No. 80599, 2002-Ohio-3637.

**2002-1637. State v. McGee.**

Lorain App. No. 01CA007952, 2002-Ohio-4249.

**2002-1639. State v. Slone.**

Montgomery App. No. 18922, 2002-Ohio-4119.

**2002-1642. Terrace Creek Assn. v. Woolpert Eng. Co.**

Montgomery App. No. 19170, 2002-Ohio-4121.

Resnick, J., dissents.

**2002-1643. Merry v. Clark.**

Muskingum App. No. CT20020004, 2002-Ohio-4204.

**2002-1644. Krost v. Baltz.**

Cuyahoga App. No. 80252, 2002-Ohio-3110.

**2002-1646. Moses v. Sterling Commerce Am., Inc.**

Franklin App. No. 02AP-161, 2002-Ohio-4327.

Lundberg Stratton and O'Connor, JJ., dissent.

**2002-1647. Nyamusevya v. Dr. T.C. Hobbs & Assoc., Inc.**

Franklin App. No. 02AP-782. On discretionary appeal, motion to dismiss appeal, motion to strike appellee's motion to dismiss, motion seeking the provision pursuant to Ohio Civ. Rule 56, motion to strike memorandum in support of jurisdiction, motion for sanctions for frivolous action, motion for sanctions for failure to make discovery and to seek this court's order to retain continuing jurisdiction, motion disclosing trial judge's false statements and violation of oath of office, U.S. Constitution, etc., and motion for expedited discovery. Discretionary appeal and motions denied.

**2002-1648. State v. Harrington.**

Hamilton App. No. C-010655.

Lundberg Stratton, J., dissents.

**2002-1649. State v. Manley.**

Cuyahoga App. No. 80256, 2002-Ohio-3903.

Resnick, J., dissents.

**2002-1654. Shaker Hts. v. Jennings.**

Cuyahoga App. No. 80622, 2002-Ohio-4166.

**2002-1656. Noll v. Noll.**

Lorain App. Nos. 01CA007932 and 01CA007976, 2002-Ohio-4154.

**2002-1658. State v. Timmons.**

Stark App. Nos. 2002CA00234 and 2001CA00333, 2002-Ohio-4206.

Resnick, J., dissents.

**2002-1659. The Ins. Outlet Agency, Inc. v. Am. Med. Security, Inc.**

Licking App. No. 01CA118, 2002-Ohio-4268. On discretionary appeal and motion for admission pro hac vice of Joel G. Chefitz and Bryna J. Dahlin by Elizabeth H. Watts. Discretionary appeal and motion denied.

**2002-1662. State v. Stewart.**

Butler App. No. CA2001-09-217, 2002-Ohio-4124.

Lundberg Stratton, J., would allow on Proposition of Law No. I.

**2002-1665. Clay v. Licking Cty. Prosecutor.**

Licking App. No. 02CA00011, 2002-Ohio-4243.

**2002-1667. State v. Livingston.**

Hamilton App. Nos. C-010465 and C-010466.

Pfeifer, J., dissents.

**2002-1670. Atkinson v. Dick Masheter Leasing II, Inc.**

Franklin App. No. 01AP-1016, 2002-Ohio-4299.

**2002-1671. DeCarlo v. Schilla.**

Cuyahoga App. No. 80170, 2002-Ohio-4186.

F.E. Sweeney, J., dissents.

**2002-1680. Kolsto v. Old Navy, Inc.**

Hamilton App. No. C-010782.

**2002-1681. State v. Rupp.**  
Belmont App. No. 02BE39.

**2002-1684. Highland Hills v. Feldman.**  
Cuyahoga App. No. 81095, 2002-Ohio-4185.

**2002-1686. Holley v. WBNS 10TV, Inc.**  
Franklin App. No. 01AP-958, 2002-Ohio-4315.  
F.E. Sweeney, J., dissents.

**2002-1688. Iler v. Wright.**  
Cuyahoga App. No. 80555, 2002-Ohio-4279.  
F.E. Sweeney, J., not participating.

**2002-1689. Muzechuk v. Muzechuk.**  
Tuscarawas App. No. 2001AP120115, 2002-Ohio-4273.

**2002-1690. State v. Steiner.**  
Cuyahoga App. Nos. 80488, 80489 and 80490, 2002-Ohio-4019.

**2002-1694. State v. Duncan.**  
Cuyahoga App. No. 80286, 2002-Ohio-4191.  
Lundberg Stratton and O'Connor, JJ., dissent.

**2002-1695. In re F.M.**  
Cuyahoga App. No. 80027, 2002-Ohio-3900.

**2002-1696. Escada Internal, Inc. v. Eurocargo Express.**  
Cuyahoga App. No. 80761, 2002-Ohio-4035.

**2002-1697. Lowe v. Univ. Hospitals of Cleveland.**  
Cuyahoga App. No. 80341, 2002-Ohio-4084.

**2002-1699. Ignash v. First Serv. Fed. Credit Union.**  
Franklin App. No. 01AP-1326, 2002-Ohio-4395.

**2002-1701. State v. Ellison.**  
Cuyahoga App. No. 78256, 2002-Ohio-4024.

**2002-1702. State v. Zudell.**

Lorain App. No. 02CA007982, 2002-Ohio-4253.

**2002-1704. State v. Braswell.**

Miami App. No. 2001CA22, 2002-Ohio-4468.

**2002-1705. Baker v. Columbiana Cty. Aud.**

Franklin App. No. 01AP-1190, 2002-Ohio-4305.

**2002-1708. Liberty Mut. Ins. Group v. Travelers Prop. Cas.**

Cuyahoga App. No. 80560, 2002-Ohio-4280.

Moyer, C.J., dissents.

**2002-1711. State v. Kitchens.**

Clark App. No. 2001CA92, 2002-Ohio-4335.

**2002-1712. Fernandez v. Anheuser-Busch, Inc.**

Franklin App. No. 01AP-1279, 2002-Ohio-3355.

**2002-1713. Thrower v. Akron Dept. of Pub. Hous. Appeals Bd.**

Summit App. No. 20992, 2002-Ohio-4530.

**2002-1718. State v. Bronner.**

Summit App. No. 20753, 2002-Ohio-4248.

Resnick and Cook, JJ., dissent.

**2002-1719. Fancher v. Portsmouth City Police Dept.**

Scioto App. No. 02CA2848.

**2002-1720. Ferraro v. B.F. Goodrich Co.**

Lorain App. No. 01CA007887, 2002-Ohio-4398.

Lundberg Stratton, J., would allow on Proposition of Law No. II.

**2002-1725. State v. Hess.**

Franklin App. Nos. 02AP-386, 02AP-387, 02AP-388, 02AP-389 and 02AP-390.

**2002-1727. State v. Garcia.**

Cuyahoga App. No. 79917, 2002-Ohio-4179.

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

**2002-1729. State v. McKinney.**

Lake App. No. 2000-L-210, 2002-Ohio-4360. Discretionary appeal and cross-appeal denied.

**2002-1733. State v. Jackson.**

Cuyahoga App. No. 80398, 2002-Ohio-4576.

**2002-1734. State v. Wyatt.**

Pike App. No. 01CA672, 2002-Ohio-4479.

O'Connor, J., not participating.

**2002-1736. State v. Smith.**

Wayne App. Nos. 01CA0039 and 01CA0055, 2002-Ohio-4402.

**2002-1737. State v. Norman.**

Franklin App. No. 01AP-588.

**2002-1741. State v. Dunckleman.**

Montgomery App. No. 19233, 2002-Ohio-4463.

**2002-1743. State v. Smith.**

Seneca App. No. 13-02-11, 2002-Ohio-5095.

**2002-1746. State v. Galloway.**

Lake App. No. 2000-L-079, 2002-Ohio-4358.

**2002-1747. State v. Prom.**

Butler App. No. CA2002-01-007, 2002-Ohio-4376.

**2002-1748. BP Exploration & Oil, Inc. v. Oakwood Planning Comm.**

Cuyahoga App. No. 80510, 2002-Ohio-4163.

**2002-1749. State v. Williams.**

Cuyahoga App. No. 80615, 2002-Ohio-4423.

**2002-1750. Ohio Water Dev. Auth. v. W. Res. Water Dist.**

Franklin App. Nos. 01AP-1244 and 01AP-1276, 2002-Ohio-4393.

Moyer, C.J., dissents.

**2002-1751. Shepherd v. Scott.**

Hancock App. No. 5-02-22, 2002-Ohio-4417.

Cook, J., not participating.

**2002-1753. Fegen v. Davet.**

Huron App. No. H-02-012, 2002-Ohio-4473.

Resnick, J., not participating.

**2002-1754. G&D, Inc. v. Ohio Liquor Control Comm.**

Crawford App. No. 3-02-04, 2002-Ohio-4407.

Pfeifer, J., dissents.

O'Connor, J., not participating.

**2002-1755. Coleman v. Featheringill.**

Richland App. No. 01CA094, 2002-Ohio-4664.

**2002-1760. Brewer v. W. Chester Twp. Planning & Zoning Dept.**

Butler App. No. CA2002-01-026, 2002-Ohio-4483.

**2002-1765. Wallace v. Rocky River.**

Cuyahoga App. No. 80182, 2002-Ohio-3901.

**2002-1766. Wright v. Davies.**

Summit App. No. 20876, 2002-Ohio-4404.

Resnick, J., dissents.

**2002-1767. State v. Craft.**

Butler App. No. CA2001-09-202, 2002-Ohio-4481.

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

**2002-1782. State v. Earle.**

Lake App. No. 2001-L-159, 2002-Ohio-4510.

Lundberg Stratton and O'Connor, JJ., dissent.

**2002-1784. P & W Outdoor Advertising v. Pierce Twp. Bd. of Zoning Appeals.**

Clermont App. No. CA2002-02-010.

**2002-1786. State v. Williams.**

Franklin App. No. 02AP-35, 2002-Ohio-4503.  
Pfeifer, J., dissents.

**2002-1789. State v. Fannin.**

Cuyahoga App. No. 80014, 2002-Ohio-4180.

**2002-1791. State v. Ervin.**

Cuyahoga App. No. 80473, 2002-Ohio-4093.

**2002-1794. Factory Indus. Maintenance Co. v. Lapine Truck Sales & Equip. Co.**

Stark App. No. 2002CA00111, 2002-Ohio-5105. Discretionary appeal and cross-appeal denied.

**2002-1795. State v. Mastin.**

Franklin App. No. 01AP-1403, 2002-Ohio-4500.

**2002-1796. State v. Nagorski.**

Franklin App. No. 02AP-143.

**2002-1797. Hurier v. Ohio Dept. of Transp.**

Franklin App. No. 01AP-1362, 2002-Ohio-4499.

**2002-1802. State v. Wilson.**

Stark App. No. 2001CA00295, 2002-Ohio-4665.  
Resnick, J., not participating.

**2002-1806. Dixon v. Professional Staff Mgt.**

Franklin App. No. 01AP-1332, 2002-Ohio-4493.

**2002-1812. Krause v. Streamo.**

Stark App. No. 2001CA00341, 2002-Ohio-4715.  
F.E. Sweeney, J., dissents.

**2002-1825. State v. Banks.**

Lorain App. No. 01CA007958, 2002-Ohio-4858.

**2002-1830. Parrett v. Univ. of Cincinnati Police Dept.**  
Franklin App. No. 02AP-220, 2002-Ohio-5076.

**2002-1836. State v. Martin.**  
Crawford App. No. 3-02-16, 2002-Ohio-4744.

**2002-1840. State v. Marshall.**  
Lorain App. No. 02CA008024, 2002-Ohio-5037.

**2002-1852. State v. Jackson.**  
Butler App. No. CA2001-10-239, 2002-Ohio-4705.

**2002-1865. State v. Cornwell.**  
Mahoning App. No. 00CA217, 2002-Ohio-5177.

**2002-1870. Schaeffer v. Nationwide Mut. Ins. Co.**  
Greene App. No. 2001CA131, 2002-Ohio-4811.  
F.E. Sweeney and Pfeifer, JJ., dissent.

**2002-1967. State v. Ruff.**  
Hamilton App. No. C-010624.

**2002-2094. In re Cooper.**  
Cuyahoga App. No. 79899, 2002-Ohio-1656. On discretionary appeal and motion for attorney fees for frivolous action. Discretionary appeal and motion denied.