

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

April 22, 2009

[Cite as *04/22/2009 Case Announcements, 2009-Ohio-1820.*]

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## MERIT DECISIONS WITHOUT OPINIONS

### **2008-2139. State ex rel. Laborers Internatl. Union of N. Am., Local Union No. 500 v. Summerville.**

In Mandamus. On respondent's motion to dismiss and relator's motion for judgment on the pleadings. Motion for judgment on the pleadings is denied. Motion to dismiss is granted based on mootness. Relator's claim for a writ of mandamus is dismissed.

The following schedule is set for the presentation of evidence and briefs on relator's request for attorney fees: Relator's evidence and brief shall be due within ten days from the date of this entry; respondent's evidence and brief shall be due ten days after the filing of relator's brief.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, Lanzinger, and Cupp, JJ., concur.

O'Donnell, J., concurs in dismissing the claim for a writ of mandamus but would deny the request for attorney fees.

### **2009-0353. [State ex rel.] Smith v. Miller.**

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

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

## MOTION AND PROCEDURAL RULINGS

### **1987-1674. State v. Broom.**

Cuyahoga App. No. 51237. On renewed motion to set execution date. Motion granted.

Pfeifer, J., dissents.

It is ordered that appellant's sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility or, in his absence, by the Deputy Warden on Tuesday, September 15, 2009, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be duly certified to the Warden of the Southern Ohio Correctional Facility and that said Warden shall make due return thereof to the Clerk of the Court of Common Pleas of Cuyahoga County.

**2008-1463. Krieger v. Cleveland Indians Baseball Co.**

Cuyahoga App. Nos. 89314, 89428, and 89463, 176 Ohio App.3d 410, 2008-Ohio-2183. On motion for admission pro hac vice of David M. Lieberman by Benjamin C. Mizer. Motion granted.

**2008-1624. In re Smith.**

Allen App. No. 1-07-58, 2008-Ohio-3234. On motion for admission pro hac vice of Marsha L. Levick by Jeffrey M. Gamso. Motion granted.

**2008-2249. State v. Rohrbaugh.**

Logan App. No. 8-07-28, 178 Ohio App.3d 211, 2008-Ohio-4781. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 1 of the court of appeals' Judgment Entry filed November 13, 2008:

“May a defendant consent to a negotiated plea to an offense that was neither indicted, nor a lesser included offense of the indicted offense, without a waiver of indictment pursuant to Criminal Rule 7(A) and Section 10, Article I of the Ohio Constitution?”

The conflict case is *State v. Robinson*, Cuyahoga App. No. 90411, 2008-Ohio-3972.

Sua sponte, cause consolidated with 2008-2127, *State v. Rohrbaugh*, Logan App. No. 8-07-28, 178 Ohio App.3d 211, 2008-Ohio-4781.

**2009-0232. State v. Lanier.**

Hamilton App. No. C-080162, 2008-Ohio-6906. On review of order certifying a conflict. The court determines that a conflict exists.

Sua sponte, cause held for the decision in 2008-2037, *State v. Williams*, Cuyahoga App. 89726, 2008-Ohio-5149 and 2008-Ohio-5286; cause consolidated

with 2009-0328, *State v. Lanier*, Hamilton App. No. C-080162, 2008-Ohio-6906; and briefing schedule stayed.

O'Connor and O'Donnell, JJ., dissent.

**2009-0415. State v. Vallejo.**

Butler App. No. CA2008-05-132. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, Lanzinger, and Cupp, JJ., dissent.

**2009-0431. State v. Stiles.**

Allen App. No. 1-08-12. On motion for leave to file delayed appeal. Motion granted.

O'Connor, J., dissents.

**2009-0468. State v. Banks.**

Summit App. No. 24259, 2008-Ohio-6432. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2009-0494. State v. Rutter.**

Muskingum App. No. CT2008-0058, 2009-Ohio-454. On motion for stay of court of appeals' judgment. Motion denied.

**2009-0535. Wooley v. Meluch.**

Summit App. No. 24196, 2009-Ohio-449. On motion for immediate stay of court of appeals' judgment. Motion denied.

Moyer, C.J., and Cupp, J., dissent.

**APPEALS ACCEPTED FOR REVIEW**

**2008-2127. State v. Rohrbaugh.**

Logan App. No. 8-07-28, 178 Ohio App.3d 211, 2008-Ohio-4781. Discretionary appeal accepted and cause consolidated with 2008-2249, *State v. Rohrbaugh*, Logan App. No. 8-07-28, 178 Ohio App.3d 211, 2008-Ohio-4781.

**2008-2343. State v. Fuller.**

Madison App. No. CA2008-04-008. Discretionary appeal accepted on Proposition of Law Nos. I, II, and IV; cause held for the decisions in 2007-0693, *State v. Bloomer*, Fulton App. No. F-06-012, 2007-Ohio-1039, 2007-1415, *State v.*

*Mosmeyer*, Hamilton App. No. C-060747, and 2007-1439, *State v. Barnes*, Portage App. No. 2006-P-0089, 2007-Ohio-3362; and briefing schedule stayed.

Lundberg Stratton and O'Donnell, JJ., would also accept the appeal on Proposition of Law No. III.

Moyer, C.J., and Pfeifer, J., would remand the cause as to Proposition of Law Nos. I and II for application of *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961.

**2009-0015. Spitznagel v. State Bd. of Edn.**

Franklin App. No. 07AP-757, 2008-Ohio-5059 and 2008-Ohio-6080.

O'Connor and O'Donnell, JJ., dissent.

**2009-0088. State v. Williams.**

Warren App. No. CA2008-02-029, 2008-Ohio-6195. Discretionary appeal accepted; cause held for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and briefing schedule stayed.

**2009-0099. State v. Jackson.**

Ashtabula App. No. 2007-A-0079, 2008-Ohio-6976.

**2009-0150. State v. Countryman.**

Washington App. No. 08CA12, 2008-Ohio-6700. Discretionary appeal accepted; cause held for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and briefing schedule stayed.

**2009-0186. State ex rel. Butler Twp. Bd. of Trustees v. Montgomery Cty. Bd. of Commrs.**

Montgomery App. No. 22664, 2008-Ohio-6542.

O'Connor, O'Donnell, and Lanzinger, JJ., dissent.

**2009-0243. In re T.C.H.**

Summit App. Nos. 24130 and 24131, 2008-Ohio-6614. Discretionary appeal accepted; cause held for the decision in 2008-1624, *In re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234; and briefing schedule stayed.

Pfeifer, J., dissents.

**2009-0328. State v. Lanier.**

Hamilton App. No. C-080162, 2008-Ohio-6906. Discretionary appeal accepted on Proposition of Law No. III; cause held for the decision in 2008-2037, *State v.*

*Williams*, Cuyahoga App. No. 89726, 2008-Ohio-5149 and 2008-Ohio-5286; cause consolidated with 2009-0232, *State v. Lanier*, Hamilton App. No. C-080162, 2008-Ohio-6906; and briefing schedule stayed.

O'Donnell, J., dissents.

## **APPEALS NOT ACCEPTED FOR REVIEW**

### **2008-1912. State v. Pompa.**

Cuyahoga App. No. 90110, 2008-Ohio-3672.

### **2008-2389. State v. Aleshire.**

Licking App. No. 2007-CA-1, 2008-Ohio-5688. Discretionary appeal not accepted. Motion to strike memorandum in response denied as moot.

### **2008-2500. State v. Wittine.**

Cuyahoga App. No. 90747, 2008-Ohio-5745.

### **2009-0006. State v. Jones.**

Hamilton App. No. C-070666, 2008-Ohio-5988.

### **2009-0009. State v. Harris.**

Lucas App. Nos. L-06-1402 and L-06-1403, 2008-Ohio-6168.

O'Connor, Lanzinger, and Cupp, JJ., dissent and would accept the appeal on Proposition of Law No. V and hold the cause for the decision in 2008-1725, *State v. Lester*, Hamilton App. No. C-070383, 2008-Ohio-3570.

### **2009-0010. State v. Smith.**

Fayette App. No. CA2007-10-035, 2008-Ohio-5931.

### **2009-0013. Jones v. Jones.**

Seneca App. No. 13-08-16, 2008-Ohio-6069.

### **2009-0016. State v. Hill.**

Champaign App. No. 2008 CA 9, 2008-Ohio-6040.

Lundberg Stratton, J., dissents.

### **2009-0020. State v. Nelson.**

Cuyahoga App. No. 90827, 2008-Ohio-5735.

### **2009-0021. State v. Thompson.**

Licking App. No. 2008CA0005, 2008-Ohio-6028.

**2009-0027. State v. Davis.**

Mahoning App. No. 08 MA 16, 2008-Ohio-6211.

**2009-0028. Buoscio v. Oborn.**

Summit App. No. 24504.

**2009-0034. State v. Nunn.**

Cuyahoga App. No. 92340.

**2009-0036. State v. Phillis.**

Washington App. No. 08CA13, 2008-Ohio-6748.

O'Donnell, J., dissents and would accept the appeal on Proposition of Law No. I.

**2009-0043. State v. Mangus.**

Columbiana App. No. 07 CO 36, 2008-Ohio-6210.

Pfeifer, J., dissents.

**2009-0047. State v. Rollins.**

Stark App. No. 2007-CA-00162, 2008-Ohio-6116.

**2009-0049. State v. Sowell.**

Cuyahoga App. No. 90732, 2008-Ohio-5875.

O'Donnell, J., dissents.

**2009-0052. State v. Harris.**

Cuyahoga App. No. 90699, 2008-Ohio-5873.

Moyer, C.J., dissents.

Cupp, J., dissents and would accept the appeal on Proposition of Law No. V and remand the cause for application of *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124.

**2009-0055. State v. Blevins.**

Hamilton App. No. C-070905.

**2009-0056. State v. Thomas.**

Allen App. No. 1-08-36, 2008-Ohio-6067.

**2009-0058. Freeman v. Freeman.**

Seneca App. No. 13-08-20, 2008-Ohio-6073.

**2009-0060. Natale v. Rocky River.**

Cuyahoga App. No. 90819, 2008-Ohio-5868.

O'Donnell, J., not participating.

**2009-0062. Klayman v. Luck.**

Cuyahoga App. No. 91298, 2008-Ohio-5876.

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

**2009-0068. State v. Caulton.**

Hamilton App. No. C-080034, 2008-Ohio-6090.

**2009-0072. Gebbie v. Licking Hts. Local Schools Bd. of Edn.**

Licking App. No. 2008-CA-48, 2008-Ohio-6216.

**2009-0073. Martin v. McKnight.**

Franklin App. No. 08AP-633, 2008-Ohio-6914.

**2009-0074. Asadorian v. Demirjian.**

Cuyahoga App. No. 90756, 2008-Ohio-5489.

**2009-0084. State v. Welsh.**

Hamilton App. Nos. C-080169 and C-080170.

**2009-0087. State v. Molen.**

Montgomery App. No. 21941, 2008-Ohio-6237.

**2009-0091. State v. Carusone.**

Hamilton App. No. C-070653.

**2009-0092. NorthPoint Properties, Inc. v. Petticord.**

Cuyahoga App. No. 90824, 179 Ohio App.3d 342, 2008-Ohio-5996.

Pfeifer, J., dissents.

**2009-0094. State v. Anderson.**

Lake App. No. 2008-L-144, 2008-Ohio-6410.

**2009-0098. Tripodi Family Trust v. Muskingum Watershed Conservancy Dist.**

Tuscarawas App. No. 2007 AP 09 0056, 2008-Ohio-6902.

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

**2009-0103. State v. Broadnax.**

Montgomery App. No. 21844.

**2009-0108. In re Dalton C.**

Licking App. No. 2008 CA 00049, 2008-Ohio-6259.

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

**2009-0109. State v. Smith.**

Cuyahoga App. No. 90476, 2008-Ohio-5985.

Moyer, C.J., and Lanzinger, J., dissent.

**2009-0110. State v. Raine.**

Cuyahoga App. No. 90681, 2008-Ohio-5993.

**2009-0113. State v. Robinson.**

Cuyahoga App. No. 89986, 2008-Ohio-5866.

**2009-0115. State v. Harry.**

Butler App. No. CA2008-01-013, 2008-Ohio-6380. Discretionary appeal not accepted. Motion for order to transmit certified copy of journal entry denied as moot.

**2009-0118. State v. Brunelle-Apley.**

Lake App. No. 2008-L-014, 2008-Ohio-6412.

**2009-0119. Thompson v. Capaldo.**

Richland App. No. 08 CA 1, 2008-Ohio-6329.

**2009-0124. JP Morgan Chase Bank v. Wells Fargo Financial Leasing, Inc.**

Logan App. No. 8-08-07, 2008-Ohio-6354.

Pfeifer, J., dissents.

**2009-0126. State v. McQueen.**

Cuyahoga App. No. 91067, 2008-Ohio-6160.

**2009-0127. State v. McCullough.**

Fayette App. Nos. CA2003-11-012 and CA2007-04-014, 2008-Ohio-6384.

**2009-0129. State v. Humphrey.**

Franklin App. No. 07AP-837, 2008-Ohio-6302.

**2009-0130. In re Estate of Deems.**

Franklin App. No. 08AP-82, 2008-Ohio-6316.

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

**2009-0131. State v. Ruiz.**

Cuyahoga App. No. 90595, 2008-Ohio-6281.

**2009-0134. Columbus Steel Castings Co. v. King Tool Co.**

Franklin App. No. 08AP-385, 2008-Ohio-6309. Discretionary appeal not accepted. Motion for admission pro hac vice of James L. Stockberger, Jeffery T. McPherson, and Theresa M. Lynch by William M. Mattes and Michael J. King granted.

**2009-0135. State v. Martinez.**

Cuyahoga App. No. 92514.

**2009-0142. Peters v. Rock-Tenn Co.**

Delaware App. No. 08 CAE 04 0019, 2008-Ohio-6444. Discretionary appeal not accepted. Motion for admission pro hac vice of Clifford M. Weiss by Christopher E. Hogan granted.

**2009-0146. State v. Anderson.**

Portage App. No. 2008-P-0002, 2008-Ohio-6413.

**2009-0147. Tisdale v. Toledo Surgical Specialists, Inc.**

Lucas App. No. L-07-1300, 2008-Ohio-6539. Discretionary appeal not accepted.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law Nos. I and II.

Lanzinger, J., dissents.

Cupp, J., dissents and would accept the appeal on Proposition of Law Nos. I, II, and III.

Motion for admission pro hac vice of Stephen B. Pershing by Peter H. Weinberger granted.

**2009-0148. In re T. P.-M.**

Summit App. No. 24199, 2008-Ohio-6437.

Moyer, C.J., dissents.

**2009-0153. State v. Davis.**

Cuyahoga App. No. 90759, 2008-Ohio-6150.

**2009-0154. State v. Thomas.**

Cuyahoga App. No. 90623, 2008-Ohio-6148.

**2009-0155. Farley v. Duke Constr.**

Franklin App. No. 08AP-192, 2008-Ohio-6419.

Pfeifer, J., dissents.

**2009-0156. Alternatives Unlimited-Special, Inc. v. Ohio Dept. of Edn.**

Franklin App. No. 08AP-396, 2008-Ohio-6427.

O'Donnell, J., dissents.

**2009-0160. Rivera v. Challenge Financial Investors Corp.**

Cuyahoga App. No. 90904, 2008-Ohio-5748.

Moyer, C.J., dissents.

**2009-0161. State v. Eberth.**

Mahoning App. No. 07-MA-196, 2008-Ohio-6596.

Moyer, C.J., dissents.

Lundberg Stratton, J., dissents and would accept the appeal on Proposition of Law No. I.

Cupp, J., dissents and would accept the appeal on Proposition of Law No. I and hold the cause for the decision in 2008-0363, *State v. Evans*, Cuyahoga App. No. 89057, 2008-Ohio-139.

**2009-0165. DiBenedetto v. Marinemax of Ohio, Inc.**

Hamilton App. Nos. C-080325 and C-080402, 2008-Ohio-6506. Discretionary appeal not accepted.

O'Connor, J., not participating.

Motion to reform caption granted.

**2009-0166. Westbrook v. Swiatek.**

Delaware App. Nos. 07 CAE 09 0046 and 07 CAE 11 0058, 2008-Ohio-6477.

**2009-0167. State v. Canales.**  
Hamilton App. No. C-080072.

**2009-0169. State v. Gorospe.**  
Summit App. No. 24111, 2008-Ohio-6435.  
Pfeifer, J., dissents.

**2009-0172. State v. Vinson.**  
Franklin App. No. 08AP-381, 2008-Ohio-6430.

**2009-0173. Turner v. Ohio Dept. of Rehab. & Corr.**  
Franklin App. No. 08AP-568, 2008-Ohio-6608.

**2009-0175. State v. Pierce.**  
Fairfield App. No. 08CA77.

**2009-0177. State v. Scott.**  
Summit App. No. 24149, 2008-Ohio-6439.

**2009-0179. State v. Cool.**  
Summit App. No. 24518. Discretionary appeal not accepted. Motion for stay of jurisdictional consideration denied.

**2009-0181. Rutkai v. Freeland.**  
Summit App. No. 24267, 2008-Ohio-6440.

**2009-0183. State v. West.**  
Franklin App. No. 08AP-813, 2008-Ohio-6516.

**2009-0185. State v. Mike.**  
Trumbull App. No. 2008-T-0097, 2008-Ohio-6564.

**2009-0188. Harrison v. Ohio Veterinary Med. Licensing Bd.**  
Franklin App. No. 08AP-408, 2008-Ohio-6519.

**2009-0190. State v. Jenkins.**  
Summit App. No. 24166, 2008-Ohio-6620.

**2009-0195. State v. Townsend.**  
Franklin App. No. 08AP-371, 2008-Ohio-6518.

**2009-0198. Price v. Paragon Graphic, Ltd.**

Richland App. No. 08CA3, 2008-Ohio-6626.

**2009-0205. State v. Moore.**

Butler App. No. CA2007-07-160, 2008-Ohio-6567.

**2009-0207. State v. Chester.**

Franklin App. No. 08AP-1, 2008-Ohio-6679.

**2009-0209. State v. Phillips.**

Summit App. No. 24198, 2008-Ohio-6795.

**2009-0230. State v. Rowles.**

Summit App. No. 24154, 2008-Ohio-6631.

**2009-0233. State v. Gonzalez.**

Franklin App. No. 08AP-345, 2008-Ohio-6605.

**2009-0241. Nixon v. Quality Mold, Inc.**

Summit App. No. 24314, 2008-Ohio-6618.

**2009-0246. Kvinta v. Kvinta.**

Richland App. No. 08CA36, 2008-Ohio-6798. Discretionary appeal not accepted.  
Motion to consolidate denied as moot.

**2009-0255. State v. Williams.**

Summit App. No. 24492.

**2009-0263. State v. Rutan.**

Franklin App. No. 97AP-389.

**2009-0282. Fuqua v. Mustang Auto Sales & Serv.**

Cuyahoga App. No. 90570, 2008-Ohio-6472.

**2009-0288. DeAscentis v. Margello.**

Franklin App. No. 08AP-522, 2008-Ohio-6821.

**2009-0292. State v. Liu.**

Summit App. No. 24112, 2008-Ohio-6793.

O'Donnell, J., dissents.

**2009-0302. State v. Gau.**

Ashtabula App. No. 2008-A-0030, 2008-Ohio-6988.

**2009-0306. State v. King.**

Muskingum App. No. CT2008-0062, 2009-Ohio-412.

**2009-0308. State v. Ashipa.**

Hamilton App. Nos. C-070436 and C-070457.

**2009-0309. State v. Webster.**

Hamilton App. No. C-070027, 2008-Ohio-1636.  
Moyer, C.J., dissents.

**2009-0338. State v. Sarnesky.**

Summit App. No. 24050, 2008-Ohio-6941.

**2009-0339. State v. Jones.**

Mahoning App. No. 05-MA-69, 2008-Ohio-6974.

**2009-0361. State v. Barr.**

Cuyahoga App. No. 89740, 2009-Ohio-218.

**2009-0421. State v. Hughes.**

Franklin App. No. 07AP-4.

**RECONSIDERATION OF PRIOR DECISIONS**

**2008-2007. Karnofel v. Girard Police Dept.**

Trumbull App. Nos. 2008-T-0043 and 2008-T-0048, 2008-Ohio-4414. Reported at 120 Ohio St.3d 1524, 2009-Ohio-614, 901 N.E.2d 244. On motion for reconsideration. Motion denied.

**2008-2136. Estate of Williams v. Deutsche Bank Trust Co. Am.**

Cuyahoga App. No. 90967, 2008-Ohio-3981. Reported at 120 Ohio St.3d 1526, 2009-Ohio-614, 901 N.E.2d 245. On motion for reconsideration. Motion denied.

**2008-2366. Portage Metro. Hous. Auth. v. Brumley.**

Portage App. No. 2008-P-0019, 2008-Ohio-5534. Reported at 120 Ohio St.3d 1443, 2008-Ohio-6528, 897 N.E.2d 1140. On motion for reconsideration. Motion denied.

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

**2008-2480. Gibson v. Sheldon.**

In Habeas Corpus. Reported at 120 Ohio St.3d 1522, 2009-Ohio-614, 901 N.E.2d 242. On motion for reconsideration. Motion denied. Requests for reopening and for findings of fact/conclusions of law denied as moot.