

THE STATE OF OHIO, APPELLANT, v. HENRY, APPELLEE.

[Cite as *State v. Henry*, 126 Ohio St.3d 1201, 2010-Ohio-2670.]

Appeal dismissed as improvidently accepted.

(No. 2009-1572 — Submitted May 26, 2010 — Decided June 16, 2010.)

APPEAL from the Court of Appeals for Seneca County, No. 13-08-10,
2009-Ohio-3535.

{¶ 1} The cause is dismissed, sua sponte, as having been improvidently accepted.

BROWN, C.J., and PFEIFER, LUNDBERG STRATTON, O’CONNOR, O’DONNELL, and LANZINGER, JJ., concur.

CUPP, J., dissents and would reverse the judgment of the court of appeals and adopt the reasoning of the dissenting opinion in the court of appeals.

Derek W. DeVine, Seneca County Prosecuting Attorney, and James A. Davey, Assistant Prosecuting Attorney, for appellant.

Javier H. Armengau, for appellee.

Richard Cordray, Attorney General, Benjamin C. Mizer, Solicitor General, Brandon J. Lester, Deputy Solicitor, and William J. Cole, Assistant Solicitor, urging reversal for amicus curiae Ohio Attorney General.

Donald W. White, Clermont County Prosecuting Attorney, and David H. Hoffmann, Assistant Prosecuting Attorney, urging reversal for amicus curiae Ohio Prosecuting Attorneys Association.

Timothy Young, Ohio Public Defender, and Katherine A. Szudy, Assistant Public Defender, urging affirmance for amicus curiae Ohio Public Defender.
