IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

DECEMBER SESSION 1999

STATE OF TENNESSEE,	)	
	)	**NO. 03C01-9903-CR-00106**
Appellee,	)	
	)	**KNOX COUNTY**
VS.	)	
	)	**HON. MARY BETH LEIBOWITZ**
ANDREA MCCRAW,	)	**JUDGE**
	)	
Appellant.	)	(Certified Question of Law)

FOR THE APPELLANT:

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OPINION FILED: _____

APPEAL DISMISSED

JERRY L. SMITH,
JUDGE

OPINION

The appellant, Andrea McCraw, pled guilty in the Knox County Criminal Court to one (1) count of aggravated assault and was sentenced as a Range II, Multiple Offender to six (6) years incarceration. Pursuant to Rule 37(b)(2)(i) of the Tennessee Rules of Criminal Procedure, the appellant attempted to reserve a certified question of law to this Court on the issue whether he was denied his right to a speedy trial. After a thorough review of the record before this Court, we conclude that the appellant failed to properly reserve a certified question of law. Therefore, the appellant's issue is not properly before this Court, and this appeal is dismissed.

In September 1994, the appellant was charged in a four-count indictment with one (1) count of attempted first degree murder and three (3) alternative counts of aggravated assault. The appellant's trial date was delayed for over three (3) years due to numerous continuances. On three (3) separate occasions and as early as March 1995, the appellant invoked his right to a speedy trial, claiming that the lengthy delays prejudiced his right to a fair trial.[1] On September 29, 1997, the trial court declined to dismiss the indictment due to a violation of the appellant's right to a speedy trial.

In February 1999, the appellant entered a guilty plea to one (1) count of aggravated assault and received a sentence of six (6) years incarceration. During the guilty plea hearing, the appellant attempted to reserve a certified question of law to the appellate courts on the speedy trial issue. The state and the trial court consented to reserving the certified question of law, and all parties agreed that the speedy trial issue was dispositive of the case.

Rule 37(b)(2)(i) of the Tennessee Rules of Criminal Procedure provides:

> An appeal lies from any order or judgment in a criminal proceeding where the law provides for such appeal, and from any judgment of conviction . . . upon a plea of guilty or nolo contendere if . . . defendant entered into a plea agreement under Rule 11(e) but explicitly reserved with the consent of the State and of the court the right to appeal a certified question of law that is dispositive of the case.

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[1] The appellant filed two (2) *pro se* motions for a speedy trial; another such motion was filed by counsel.

In State v. Preston, 759 S.W.2d 647 (Tenn. 1988), our Supreme Court outlined the prerequisites to an appellate court's consideration of a certified question of law on its merits:

> Regardless of what has appeared in prior petitions, orders, colloquy in open court or otherwise, the final order or judgment from which the time begins to run to pursue a T.R.A.P. 3 appeal must contain a statement of the dispositive certified question of law reserved by defendant for appellate review and the question of law must be stated so as to clearly identify the scope and the limits of the legal issue reserved. . . . Also, the order must state that the certified question was expressly reserved as part of a plea agreement, that the State and the trial judge consented to the reservation and that the State and the trial judge are of the opinion that the question is dispositive of the case. Of course, the burden is on the defendant to see that these prerequisites are in the final order and that the record brought to the appellate courts contains all of the proceedings below that bear upon whether the certified question of law is dispositive and the merits of the question certified.

Id. at 650. Because the prerequisites enunciated in Preston are mandatory, failure to properly reserve a certified question of law pursuant to Preston will result in the dismissal of the appeal. *See* State v. Pendergrass, 937 S.W.2d 834, 838 (Tenn. 1996); State v. Caldwell, 924 S.W.2d 117, 119 (Tenn. Crim. App. 1995).

The final judgment in this case from which the time for filing an appeal pursuant to Tenn. R. App. P. 3 began to run was entered on February 22, 1999. This judgment does not contain a statement of any dispositive question of law, does not contain a statement that the certified question was expressly reserved, and does not contain a statement that the state and trial court agree that the question is dispositive.

The record does contain the trial court's order filed contemporaneously with the notice of appeal on March 16, 1999, which states that the appellant is specifically reserving a certified question of law. Additionally, the order contains a statement that the state and the trial court agree that the question of law is dispositive. In State v. Irwin, 962 S.W.2d 477, 479 (Tenn. 1998), our Supreme Court relaxed the Preston requirements somewhat by allowing a certified question to be set out in an independent document, and such document to be incorporated by reference into the judgment. However, the trial court's order, which could arguably satisfy the Preston requirements, is not incorporated by reference into the final judgment entered on February 22.

We are not unsympathetic to the appellant's inevitable frustration with this

Court's dismissal of his appeal despite his efforts at compliance with the Preston requirements. However, the holding in Preston created a bright-line rule from which this Court may not depart. Moreover, compliance with the Preston requirements is not over-burdensome or demanding. Because the final judgment does not contain a statement of the certified question of law, nor does the judgment refer to an independent document which would satisfy the requirements of Preston, we are left with no choice but to dismiss this appeal.

Accordingly, after carefully reviewing the record in this case, we find that the appellant has failed to properly reserve the right to appeal a certified question of law in accordance with the requirements of Tenn. R. Crim. P. 37, and this appeal is hereby dismissed.

JERRY L. SMITH, JUDGE

CONCUR:

(See Dissenting Opinion)
JOSEPH M. TIPTON, JUDGE

DAVID H. WELLES, JUDGE