

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

APRIL 1996 SESSION

**FILED**

June 11, 1996

**Cecil W. Crowson**  
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

VS.

ANTHONY B. HESTER,

Appellant.

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C.C.A. NO. 01C01-9509-CR-00289

DAVIDSON COUNTY

HON. ANN LACY JOHNS,  
JUDGE

(Certified question of law)

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FOR THE APPELLEE:

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OPINION FILED: \_\_\_\_\_

**APPEAL DISMISSED**

**JOHN H. PEAY,**  
Judge

## OPINION

The defendant, a pawnbroker, was indicted for, among other things, knowingly failing to obtain the local address of a pawnor in violation of T.C.A. § 45-6-213 (1993). The defendant pled nolo contendere to this charge.

The defendant now attempts to attack his conviction through a certified question of law. As pointed out by the State in its brief, however, the defendant has not properly reserved this matter for appeal.

Tenn. R. Crim. P. 37(b)(2)(i) 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[.]

Our Supreme Court set forth the requirements for properly reserving a certified question of law as follows:

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. . . . Without an explicit statement of the certified question, neither the defendant, the State nor the trial judge can make a meaningful determination of whether the issue sought to be reviewed is dispositive of the case. . . . No issue beyond the scope

of the certified question will be considered.

State v. Preston, 759 S.W.2d 647, 650 (Tenn. 1988). It is the defendant's burden to satisfy these requirements. Id.

In this case the defendant first attempted to reserve a certified question of law in his petition to enter his plea to this charge. This petition includes the statement, "Defendant to appeal, with the consent of the State and of the Court a certified question of law that is dispositive of the case under TN Rule of Criminal Procedure 37 (B)(2)(I) [sic]," and was signed by the defendant, his lawyer and the Assistant District Attorney General who represented the State in this matter. The trial court's order accepting the plea makes no reference whatsoever to the reservation of a certified question of law.

The trial court's verdict, however, does include the statement, "Thereupon, the defendant to appeal certified question of law pursuant to T.C. A. 37(B)(2)(1) [sic]." Also, the judgment entered on the defendant's conviction states as a special condition, "Defendant to appeal certified question of law pursuant to Tenn. R. Crim. P. 37(b)(2)(i)."

Nowhere in any of these documents is any statement provided as to what actually constitutes the certified question of law. Again, "the question of law must be stated so as to clearly identify the scope and the limits of the legal issue reserved." Preston, 759 S.W.2d at 650. The only allusion whatsoever to the substance of the question sought to be reserved appears in the caption of the trial court's verdict, which includes the reference "Failing to obtain local address of pawn[o]r (certified question of law as to motion to dismiss)." This is simply not sufficient.

We recognize that our Supreme Court appears to have relaxed the Preston

requirements somewhat by its recent order in State v. Sarah Hutton Downey, No. 03C01-9307-CR-00221, Hamilton County (filed July 6, 1994). In that case, a panel of this Court dismissed an attempted appeal on a certified question of law, finding “In this case the final order simply incorporated by reference various issues the appellant raised in several motions before the trial court.” Our Supreme Court remanded the case to this Court “for consideration of the certified issue,” and set forth what it had determined the certified issue to be.

In this case, however, we have no such incorporation. Even if the reference to the defendant’s motion to dismiss in the caption of the verdict was sufficient to incorporate the issues raised in that motion, which we find it was not, the issues set forth in the motion do not allow us to properly identify the “scope and the limits of the legal issue reserved.” The defendant’s motion to dismiss raised four issues about the statute in question: the legislature’s intent; whether it results in an unconstitutional restraint of trade; the variance between it and the local ordinances; and its ambiguity. In his brief in support of his appeal, however, the defendant raises different issues: his standing to challenge the constitutionality of the statute; whether his due process rights were violated by enforcement of the statute because it is void for vagueness; and whether this Court should adopt the doctrine of in pari materia in construing the statute. Thus, the defendant’s motion raises multiple issues with no indication of which one(s) he desires this Court to address, and his brief on appeal raises still more issues. We simply cannot make a determination from this morass as to what the the defendant sought to reserve as the certified question.

The defendant having failed to properly reserve a certified question of law under Tenn. R. Crim. P. 37(b)(2)(i) and Preston, the judgment below is affirmed and this

appeal is dismissed.

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JOHN H. PEAY, Judge

CONCUR:

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JOE B. JONES, Judge

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DAVID G. HAYES, Judge