

APPENDIX A

FILED

MAY 17 2022

Clerk of the Appellate Courts
Rec'd by *RGooyal*

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs March 2, 2022

**ABRAHAM A. AUGUSTIN v. TENNESSEE DEPARTMENT OF SAFETY
AND HOMELAND SECURITY**

Appeal from the Chancery Court for Knox County
No. 200826-2 Clarence E. Pridemore, Jr., Chancellor

No. E2021-00635-COA-R3-CV

This case arises from the 2009 seizure of Appellant's property and the subsequent forfeiture of same. Appellant petitioned for judicial review, and the trial court dismissed the petition for lack of subject matter jurisdiction. On appeal, we conclude that because Appellant's petition was not filed within sixty days of receiving notice of the forfeiture, *see* Tenn. Code Ann. § 4-5-322(b)(1)(A)(iv), the trial court lacked subject matter jurisdiction to review the forfeiture. Accordingly, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed and Remanded**

KENNY ARMSTRONG, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and JOHN W. MCCLARTY, J., joined.

Abraham A. Augustin, Coleman, Florida, pro se.

Herbert H. Slatery, III, Attorney General and Reporter; Andrée Sophia Blumstein, Solicitor General; and Mallory Kathryn Schiller, Assistant Attorney General, for the appellee, Tennessee Department of Safety and Homeland Security.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

On December 3, 2009 and, again, on December 9, 2009, Appellant Abraham Augustin was arrested by officers of the Bradley County Sheriff's Office. Incident to the arrests, the Sheriff's Office seized certain property, including cash and a vehicle. Forfeiture warrants were issued. Mr. Augustin did not file a claim seeking return of the

property, and on May 5, 2010 and April 15, 2011, the Appellee Tennessee Department of Safety and Homeland Security (“the Department”) issued orders of forfeiture for the property.¹

On February 9, 2016, Mr. Augustin filed an action in circuit court against the Bradley County Sheriff’s Office, seeking a return of “property that [was] forfeited without Due Process.” *See Augustin v. Bradley Cty. Sheriff’s Office*, 598 SW.3d 220, 222 (Tenn. Ct. App. 2019), *perm. app. denied* (Feb. 19, 2020) (“*Augustin I*”). The circuit court dismissed Mr. Augustin’s lawsuit for lack of subject matter jurisdiction. *Id.* On October 2, 2019, this Court affirmed the circuit court in part and reversed it in part. *Id.* at 235. The *Augustin I* Court concluded that the circuit court lacked jurisdiction because Mr. Augustin never filed a claim with the Department, as he was required to do. *Id.* at 231–32. Construing Mr. Augustin’s complaint as a petition for judicial review of the forfeiture orders, the *Augustin I* Court further concluded that the action was untimely because it had not been filed within the statutory 60-day period. *Id.* at 234. Thus, the *Augustin I* Court concluded that, “[T]he trial court correctly dismissed any claim for the return of the property seized under Tennessee Code Annotated section 40-33-201 *et seq.* [, Uniform Administrative Procedures Act (“UAPA”)] where Appellant failed to file a claim for the property with the Tennessee Department of Safety and failed to file a timely petition for judicial review pursuant to the UAPA.” *Id.* at 235; Tenn. Code Ann. § 4-5-322(b)(1)(A)(iv) (“[p]etitions seeking judicial review shall be filed within sixty (60) days after the entry of the agency’s final order thereon.”).

Turning to the facts giving rise to the instant appeal, according to Mr. Augustin’s “Petition for Judicial Review Pursuant to Tennessee Code Annotated Sec. 40-33-213,” he filed a claim for the return of forfeited property with the Commissioner of Safety on November 4, 2019, which was approximately one month after this Court issued its opinion in *Augustin I*. The Department received the claim on December 5, 2019 and rejected it as untimely. On December 10, 2019, Mr. Augustin filed a petition for judicial review in the Davidson County Chancery Court, and on August 5, 2020, the case was transferred to the Knox County Chancery Court (“trial court”). In his petition, Mr. Augustin alleged that his “cash and vehicle were forfeited without due process in direct violation of the Fourteenth Amendment of the U.S. Constitution.” He made, *inter alia*, the following averments, which we reproduce here verbatim (with only references to appendices omitted):

11. From the arrest scene, on December 9, 2009, petitioner was immediately transported to the Bradley County Justice Center (hereafter “BCJC”) where he would remain in the custody of Bradley County on NO

¹ The forfeiture of Mr. Augustin’s property was pursuant to the Drug Control Act. *See* Tenn. Code Ann. § 53-11-451.

BOND on federal charges, pending trial and sentencing, until March 17, 2011. Petitioner had no charges in Bradley County.

12. Days afterwards, the BCSO sought Forfeiture Warrants for the mentioned cash and vehicle in the Bradley County Criminal Court located in the same building as the BCSO and BCIC—where petitioner was being housed at the time. The Forfeiture Warrants were obtained, and even though he was in the same building as the criminal court that issued the warrants, the warrants were nevertheless forwarded to the Tennessee Department of Safety whence they were mailed to two different addresses in Winston-Salem, North Carolina: a) 560 Westview Dr. and b) 560 Westside Dr. (a non-existent street address).

13. Needless to say, petitioner was never served the Forfeiture Warrants nor Forfeiture Orders that were also mailed to North Carolina for service. As a result, his cash and vehicle were illegally forfeited without due process.

14. Petitioner never received any forfeiture warrants nor orders from the BCSO nor respondent.

15. Recently, during a federal criminal proceeding, the United States submitted to petitioner the forfeiture warrants and orders (mailed to North Carolina) that had been concealed for years and never received by petitioner.

16. On October 31, 2019, petitioner filed a claim with the Commissioner of Safety in Nashville to inform him/her that petitioner had never received the forfeiture documents and his property therefore had been forfeited without due process.

17. On November 4, 2019, the Commissioner of Safety received the claim. No response was ever provided.

Mr. Augustin sought “the immediate return of the cash and monetary value of the vehicle, plus interest,” “compensatory damages for [the] deprivation of his resources illegally for such a period, and punitive damages against respondent for deceit, fraud, and willful neglect.”

The Department filed a motion to dismiss, pursuant to Tennessee Rule of Civil Procedure 12.02(1). By order of June 10, 2021, the trial court granted the Department’s motion on its finding that it lacked subject matter jurisdiction under Tennessee Code Annotated section 4-5-322(b)(1)(A)(i) because Mr. Augustin did not file his petition within 60 days of the Department’s 2011 forfeiture order. Specifically, the trial court held:

3. [Mr. Augustin's] failure to meet the time requirement has already been decided by the Court of Appeals:

[A]ppellant has failed to meet this requirement. For one, there can be no dispute that Appellant failed to seek judicial review within sixty days of the issuance of any of the administrative forfeiture orders. Moreover, even taking Appellant's allegation that he did not receive notice of the orders until November 12, 2015, and assuming, arguendo, that this is the date upon which the sixty-day time period began to run, Appellant's petition was filed well outside the sixty-day time period.

Augustin v. Bradley Cty. Sheriff's Office, 598 S.W.3d 220, 234 (Tenn. Ct. App. 2019), *appeal denied* (Feb. 19, 2020).

4. The Supreme Court of Tennessee declined to review the opinion in *Augustin v. Bradley Cty. Sheriff's Office*. Thus, it is final and binding on this Court.
5. This Court lacks subject matter jurisdiction over this claim and it must be dismissed.

Mr. Augustin moved to alter or amend the judgment, asserting that the trial court misconstrued this Court's opinion in *Augustin I*. By order of September 15, 2021, the trial court denied the motion, finding that

[Mr. Augustin] has merely reasserted arguments made at the first hearing, or asserted new arguments which could have been made at that time. This is improper. Furthermore, [he] failed to establish that this [c]ourt erred in treating the opinion of the Court of Appeals in *Augustin v. Bradley Cty. Sheriff's Office*, 598 S.W.3d 220, 234 (Tenn. Ct. App. 2019), as binding precedent.

Mr. Augustin appeals.

II. ISSUES

Mr. Augustin presents eight issues for review.² We perceive that there is one dispositive issue: Whether the trial court erred in dismissing Mr. Augustin's petition for lack of subject matter jurisdiction.

² We are mindful of the fact that Mr. Augustin has proceeded pro se at all stages of this litigation.

III. STANDARD OF REVIEW

“[W]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Tenn. R. Civ. P. 12.08. The Tennessee Supreme Court has explained:

Tennessee Rule of Civil Procedure 12.02(1) governs a motion to dismiss for lack of subject matter jurisdiction. Subject matter jurisdiction involves a court’s lawful authority to adjudicate a controversy brought before it. Subject matter jurisdiction depends on the nature of the cause of action and the relief sought and can only be conferred on a court by the constitution or a legislative act.

Where subject matter jurisdiction is challenged under Rule 12.02(1), the party asserting that subject matter jurisdiction exists . . . has the burden of proof. Since a determination of whether subject matter jurisdiction exists is a question of law, our standard of review is *de novo*, without a presumption of correctness.

Chapman v. DaVita, Inc., 380 S.W.3d 710, 712–13 (Tenn. 2012) (citations and quotation marks omitted).

IV. ANALYSIS

The UAPA governs judicial review of civil forfeiture proceedings. *See Ally Fin. v. Tenn. Dep’t of Safety & Homeland Sec.*, 530 S.W.3d 659, 663 (Tenn. Ct. App. 2017). A person aggrieved by a final decision of a state agency is entitled to judicial review of the decision. *See* Tenn. Code Ann. § 4-5-322. To secure judicial review, one must file a petition for review in an appropriate chancery court within sixty days after the entry of the final order to be reviewed. Tenn. Code Ann. § 4-5-322(b)(1)(A). “A party’s failure to file a petition for review on or before the statutory deadline prevents the courts from exercising their jurisdiction to review the agency’s decision.” *Davis v. Tenn. Dep’t of Emp’t Sec.*, 23 S.W.3d 304, 307-308 (Tenn. Ct. App. 1999).

The Department argues that

[t]he chancery court correctly found that it lacked subject matter jurisdiction over the petition for judicial review because it had not been filed within 60

However, as we have stated previously, a party’s pro se status does not relieve him or her of the obligation to comply with the substantive and procedural rules that we expect represented parties to observe. *See Augustin I*, 598 S.W.3d at 225.

days of the administrative action being challenged. Indeed, this Court has so held [in *Augustin I*] with respect to a petition *previously* filed by [Mr. Augustin] involving this same property.

As set out above, Mr. Augustin argues, as he did in *Augustin I*, that he did not receive timely notice of the forfeiture warrants, and, consequently, the 60-day period to file judicial review has not run. Concerning the application of *Augustin I*, Mr. Augustin asserts that the Department “has misconstrued the opinion in its context” and “cherry-picked one paragraph . . . to support its position.” He argues that this Court’s holding in *Augustin I* that his petition was filed beyond the 60-day period is inapplicable to the instant case because, in *Augustin I*, “he never filed a petition for judicial review. . . [and] that judgment was directed at the circuit court—not the chancery court.”³ Mr. Augustin’s arguments are not persuasive.

Mr. Augustin alleged that he received notice of the forfeiture orders during federal criminal proceedings on November 12, 2015. His petition in the instant case was filed in the Davidson County Chancery Court on December 10, 2019, more than four years later. This is clearly beyond the statutory 60-day limit. Notwithstanding Mr. Augustin’s contention that the notice provided was not timely, “the fact that the notice did not comport with due process . . . merely altered the date upon which a timely claim could be filed.” *Augustin I*, 598 S.W.3d at 233 (citing *Redd v. Tenn. Dep’t of Safety*, 895 S.W.2d 332, 335 (Tenn. 1995)). Indeed, the *Augustin I* Court concluded that

there can be no dispute that Appellant failed to seek judicial review within sixty days of the issuance of any of the administrative forfeiture orders. . . even taking Appellant’s allegation that he did not receive notice of the orders until November 12, 2015.

Id. at 234. The same is true here. In this case, Mr. Augustin pursued his claim against the Department, which was the proper avenue. In *Augustin I*, he pursued the claim against the Sheriff’s Office, and the *Augustin I* Court noted that, “[T]he proper avenue of relief should

³ Part of Mr. Augustin’s argument appears to be based on a misreading of the word “*arguendo*” in this passage:

[E]ven taking Appellant’s allegation that he did not receive notice of the orders until November 12, 2015, and assuming, *arguendo*, that this is the date upon which the sixty-day time period began to run, Appellant’s petition was filed well outside the sixty-day time period.

Augustin I, 598 S.W.3d at 234. We understand that *arguendo* is not a commonly used outside the realm judicial opinions. Therefore, in response to Mr. Augustin’s argument, we would like to clarify that in this passage, we denoted that even when we give Mr. Augustin the benefit of the doubt and accept as established fact that he did not receive notice of the orders until November 12, 2015, his petition was still filed too late because it was filed more than sixty days after that date.

have been to . . . file a claim with the Tennessee Department of Safety.” Nonetheless, Mr. Augustin was required to file his claim with the Department within 60 days of receiving notice of the forfeiture. Accordingly, we reach the same result here as we did in *Augustin I*, i.e., “[E]ven taking Appellant’s allegation that he did not receive notice of the orders until November 12, 2015, and assuming, *arguendo*, that this is the date upon which the sixty-day time period begun to run, Appellant’s petition was filed well outside the sixty-day time period.” *Augustin I*, 598 S.W.3d at 234. In other words, “we cannot conclude that the alleged lack of notice in this case changes the administrative procedures applicable to Appellant’s effort to contest the forfeiture.” *Id.* at 232. Mr. Augustin’s petition was simply untimely. As such, the trial court lacked jurisdiction to conduct a judicial review of the forfeiture and properly dismissed Mr. Augustin’s petition for same.

Finally, although Mr. Augustin does not raise it as an issue in his brief, we will briefly address whether the trial court abused its discretion in denying Mr. Augustin’s motion to alter or amend the judgment.⁴ A motion to alter or amend, brought pursuant to Tennessee Rule of Civil Procedure 59.04,

should ‘be granted when the controlling law changes before the judgment becomes final; when previously unavailable evidence becomes available; or to correct a clear error of law or to prevent injustice.’” *U.S. Bank], N.A. v. Tennessee Farmers Mut. Ins. Co.*, 410 S.W.3d [820,] at 826 n.2 [(Tenn. Ct. App. 2012)] (quoting *In re M.L.D.*, 182 S.W.3d 890, 895 (Tenn. Ct. App. 2005)). Such a motion “should not be used to raise or present new, previously untried or unasserted theories or legal arguments.”” *Id.* (quoting *In re M.L.D.*, 182 S.W.3d at 895). Additionally, a Rule 59.04 motion is not simply an opportunity “to re-litigate the issues previously adjudicated” by the trial court. *Burris v. Burris*, 512 S.W.3d 239, 247 (Tenn. Ct. App. 2016).

In re March 9, 2012 Order, 637 S.W.3d 708, 712 (Tenn. Ct. App. 2020), *perm. app. denied* (Apr. 8, 2021). Mr. Augustin’s motion was no more than an attempt to relitigate the issues already adjudicated by the trial court. As in his appellate brief, Mr. Augustin asserted in his motion that the trial court misunderstood and misapplied this Court’s opinion in *Augustin I*. Because the trial court properly applied the law and because Mr. Augustin offered no previously unavailable evidence, we conclude that the trial court did not abuse its discretion in denying his Tennessee Rule of Civil Procedure 59.04 motion.

⁴ We review the denial of a motion to alter or amend under an abuse of discretion standard. *Stovall v. Clarke*, 113 S.W.3d 715, 721 (Tenn. 2003). An abuse of discretion occurs when the trial court “(1) appl[ies] an incorrect legal standard, (2) reach[es] an illogical or unreasonable decision, or (3) bas[es] its decision on a clearly erroneous assessment of the evidence.” *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010).

V. CONCLUSION

For the foregoing reasons, the trial court's order is affirmed, and the case is remanded for such further proceedings as may be necessary and are consistent with this opinion. Costs of the appeal are assessed to the Appellant, Abraham A. Augustin. Because Mr. Augustin is proceeding *in forma pauperis* in this appeal, execution for costs may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs March 2, 2022

**ABRAHAM A. AUGUSTIN v. TENNESSEE DEPARTMENT OF SAFETY
AND HOMELAND SECURITY**

Chancery Court for Knox County
No. 200826-2

No. E2021-00635-COA-R3-CV

FILED

MAY 17 2022

Clerk of the Appellate Courts
Rec'd by *RGD*

JUDGMENT

This cause came on to be heard by the Court on the record and the briefs of the parties, and for the reasons stated in the Opinion of this Court filed this date, it is so **ORDERED** that:

1. The trial court's order is **AFFIRMED**, and the case is remanded to the trial court for such further proceedings as may be necessary and are consistent with the opinion.
2. Costs of the appeal are assessed to the Appellant, Abraham A. Augustin. Because Mr. Augustin is proceeding *in forma pauperis* in this appeal, execution may issue for costs if necessary.

KENNY ARMSTRONG, J.
FRANK G. CLEMENT, JR., P.J., M.S.
JOHN W. MCCLARTY, J.

APPENDIX B

ENTERED

JUN 10 2021

**BEFORE THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE
SIXTH JUDICIAL DISTRICT**

HOWARD G. HOGAN

ABRAHAM AUGUSTIN,)
)
Petitioner,) Case No.: 2-200828
) 3-200971
vs.)
)
TENNESSEE DEPARTMENT OF)
SAFETY AND HOMELAND)
SECURITY,)
)
Respondent.)

ORDER

This matter was heard on May 7th, 2021, before Honorable Clarence Pridemore, Chancellor for the Chancery Court of Knox County, Tennessee, part II. Dwayne Fortner was present and represented the Department. The petitioner, Abraham A. Augustine, a federal inmate proceeding pro se, participated by phone.

The subject of this hearing was Respondent's Motion to Dismiss for Lack of Subject Matter Jurisdiction, which alleged this Court lacked subject matter jurisdiction because the Petitioner failed to file his petition for judicial review within the statutory time frame. After consideration of the pleadings and the arguments of the parties, it is determined that this Court does not have subject matter jurisdiction to hear petitioner's claim. This determination is based upon the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. On December 3rd, 2009, and again on December 9, 2009, the Petitioner was arrested by the Bradley County Sheriff's Department (seizing agency). Incident to both arrests, Petitioner had property seized by the seizing agency, and forfeiture warrants were issued for his property.
2. The Tennessee Department of Safety issued orders forfeiting Petitioner's property on April 15th, 2011.
3. Petitioner had actual notice of the forfeiture orders on November 12th, 2015 when he was provided copies of them as a part of his federal litigation concerning the property.¹
4. Petitioner did not file this action seeking judicial review of the administrative forfeiture orders until December 10th, 2019.

Analysis and Conclusions of Law

1. A person who is aggrieved by a final decision of an administrative agency is entitled to judicial review of the agency's decision pursuant to the Uniform Administrative Procedures Act. Tenn. Code Ann. §4-5-322 (a). A petition for judicial review must be filed within sixty days after the entry of the agency's final order. Tenn. Code Ann. §4-5-322 (b)(1)(A)(i).
2. The sixty-day time limitation is jurisdictional. "A party's failure to file a petition for review on or before the statutory deadline prevents the courts from exercising their jurisdiction to review the agency's decision." *Davis v. Tenn. Dep't of Emp't Sec.*, 23 S.W.3d 304, 307-08 (Tenn. Ct. App. 1999).

¹ The Petitioner has alleged technical defects in this notice. Petitioner has failed to recognize the essence of actual notice: that he was aware and actually knew about the agency's orders. Actual notice is not subject to technical defect.

3. Petitioner's failure to meet the time requirement has already been decided by the Court of Appeals:

... [A]ppellant has failed to meet this requirement. For one, there can be no dispute that Appellant failed to seek judicial review within sixty days of the issuance of any of the administrative forfeiture orders. Moreover, even taking Appellant's allegation that he did not receive notice of the orders until November 12, 2015, and assuming, arguendo, that this is the date upon which the sixty-day time period began to run, Appellant's petition was filed well outside the sixty-day time period.

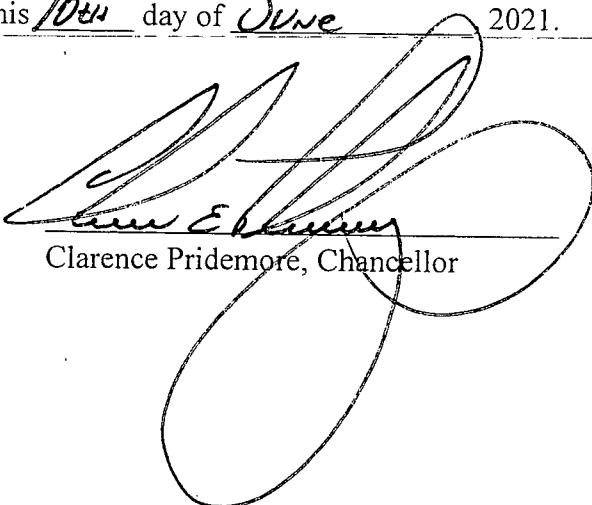
Augustin v. Bradley Cty. Sheriff's Office, 598 S.W.3d 220, 234 (Tenn. Ct. App. 2019), appeal denied (Feb. 19, 2020)

4. The Supreme Court of Tennessee declined to review the opinion in Augustin v. Bradley Cty. Sheriff's Office. Thus, it is final and binding on this Court.
5. This Court lacks subject matter jurisdiction over this claim and it must be dismissed.

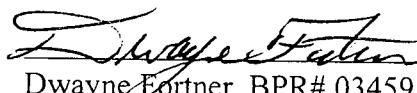
Accordingly, it is hereby **ORDERED** that this matter be dismissed. All other pending motions are hereby denied as being moot. Costs are taxed to the Petitioner.

It is so **ORDERED**.

This FINAL ORDER entered and effective this 10th day of June 2021.


Clarence Pridemore, Chancellor

Prepared by,



Dwayne Fortner, BPR# 034591

Attorney 3

Tennessee Department of Safety and
Homeland Security

7175 Strawberry Plains Pike, Ste 301
Knoxville, TN 37914

T: 865-594-5824

F: 865-594-5311

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this proposed order was sent via U.S. Mail, first class postage on this the 28th day of May, 2021 to:

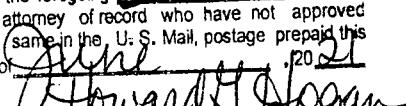
Abraham Asley Augustin
Reg. No. 42542-074
Federal Correction Complex-Medium
P.O. Box 1032
Coleman, Florida 33521-1033



Dwayne Forther

CERTIFICATE
I, Howard G. Hogan hereby certify that I have mailed a true and accurate copy of the foregoing Order to all parties or their attorney of record who have not approved same by placing same in the U. S. Mail, postage prepaid this 18th day of June, 2021.

PLA
ATD



Howard G. Hogan
Clerk & Master Chancery Court
By Sandy Johnson
Deputy Clerk

APPENDIX C

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

FILED
11/17/2022
Clerk of the
Appellate Courts

**ABRAHAM A. AUGUSTIN v. TENNESSEE DEPARTMENT OF SAFETY
AND HOMELAND SECURITY**

**Chancery Court for Knox County
No. 200826-2**

No. E2021-00635-SC-R11-CV

ORDER

Upon consideration of the application for permission to appeal of Abraham A. Augustin and the record before us, the application is denied.

PER CURIAM

APPENDIX D

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

FILED

06/06/2022

Clerk of the
Appellate Courts

**ABRAHAM A. AUGUSTIN v. TENNESSEE DEPARTMENT OF SAFETY
AND HOMELAND SECURITY**

**Chancery Court for Knox County
No. 200826-2**

No. E2021-00635-COA-R3-CV

ORDER

On June 1, 2022, Appellant Abraham Augustin filed a petition for rehearing pursuant to Rule 39 of the Tennessee Rules of Appellate Procedure. After a careful review of Appellant's arguments, the petition for rehearing is respectfully denied. Costs associated with the petition are taxed to Appellant Abraham Augustin. Because Mr. Augustin is proceeding *in forma pauperis* in this appeal, execution for costs may issue if necessary.

PER CURIAM

APPENDIX E

[View the 2019 Tennessee Code](#) | [View Other Versions of the Tennessee Code](#)

2010 Tennessee Code

Title 4 - State Government

Chapter 5 - Uniform Administrative Procedures Act

Part 1 - General Provisions

4-5-102 - Chapter definitions.

4-5-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) “Administrative judge” means an agency member, agency employee or employee or official of the office of the secretary of state, licensed to practice law and authorized by law to conduct contested case proceedings pursuant to § 4-5-301;

(2) “Agency” means each state board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute or constitutional provision to make rules or to determine contested cases;

(3) “Contested case” means a proceeding, including a declaratory proceeding, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing. Such proceeding may include rate making; price fixing; granting of certificates of convenience and necessity; the making, review or equalization of tax assessments; the granting or denial of licenses, permits or franchises where the licensing board is not required to grant the licenses, permits or franchises upon the payment of a fee or the finding of certain clearly defined criteria; and suspensions of, revocations of, and refusals to renew licenses. An agency may commence a contested case at any time with respect to a matter within the agency's jurisdiction;

APPENDIX F

2010 Tennessee Code
Title 4 - State Government
Chapter 5 - Uniform Administrative
Procedures Act
Part 3 - Contested Cases
4-5-322 - Judicial review.

4-5-322. Judicial review.

(a) (1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2) A state agency is considered to be an aggrieved person for the purpose of judicial review when the order is from a board, commission or other entity independent of the aggrieved agency. In such instances, judicial review under this chapter is permitted upon the request of the agency head and the approval of the attorney general and reporter.

(b) (1) (A) Proceedings for review are instituted by filing a petition for review in the chancery court of Davidson County, unless another court is specified by statute. Such petition shall be filed within sixty (60) days after the entry of the agency's final order thereon.

(B) (i) A person who is aggrieved by a final decision of the department of human services or the department of children's services in a contested case may file a petition for review in the chancery court located either in the county of the official residence of the appropriate commissioner or in the county in which any one (1) or more of the petitioners reside.

(ii) A person who is aggrieved by the final determination of a hearing officer or local board of education in a special education hearing conducted pursuant to § 49-10-601 may file a petition for review in the chancery court of Davidson County or, alternatively, in the county in which the petitioner resides.

(iii) A person who is aggrieved by any final decision of the Tennessee regulatory authority, or by a final decision of the state board of equalization in a contested case involving centrally assessed utility property assessed in accordance with title 67, chapter 5, part 13, shall file any petition for review with the middle division of the court of appeals.

(2) In a case in which a petition for judicial review is submitted within the sixty-day period but is filed with an inappropriate court, the case shall be transferred to the appropriate court. The time for filing a petition for review in a court as provided in this chapter shall not be extended because of the period of time allotted for filing with the agency a petition for reconsideration. Copies of the petition shall be served upon the agency and all parties of record, including the attorney general and reporter, in accordance with the provisions of the Tennessee Rules of Civil Procedure pertaining to service of process.

(c) The filing of the petition for review does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing that shall be held within ten (10) days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied. The reviewing court shall not consider a stay unless notice has been given to the attorney general and reporter; nor shall the reviewing court consider a stay unless the petitioner has previously sought a stay from the agency or demonstrates that an agency ruling on a stay application cannot be obtained within a reasonable time.

(d) Within forty-five (45) days after service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all the parties of the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(f) The procedure ordinarily followed in the reviewing court will be followed in the review of contested cases decided by the agency, except as otherwise provided in this chapter. The agency that issued the decision to be reviewed is not required to file a responsive pleading.

(g) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court.

(h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5) (A) Unsupported by evidence that is both substantial and material in the light of the entire record.

(B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(i) No agency decision pursuant to a hearing in a contested case shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.

(j) The reviewing court shall reduce its findings of fact and conclusions of law to writing and make them parts of the record.

[Acts 1974, ch. 725, § 17; 1975, ch. 370, § 6; 1978, ch. 815, § 1; 1978, ch. 938, § 13; T.C.A., § 4-523; Acts 1980, ch. 478, § 1; T.C.A., § 4-5-117; Acts 1982, ch. 874, § 63; 1986, ch. 738, § 2; 1995, ch. 305, § 68; 2002, ch. 610, § 1.]

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APPENDIX G

**2010 Tennessee Code
Title 39 - Criminal Offenses
Chapter 11 - General Provisions
Part 7 - Disposition of Forfeited Property
39-11-708 - Procedure for judicial
forfeiture of property.**

39-11-708. Procedure for judicial forfeiture of property.

- (a)** If real or personal property is subject to forfeiture under this part, the attorney general may initiate an in rem forfeiture proceeding in the circuit, chancery, or general sessions court of the county where the property is located or where the conduct giving rise to forfeiture occurred. If the property is beyond the jurisdiction of the court, the attorney general may initiate an in personam action against the owner or interest holder if the owner or interest holder is subject to the jurisdiction of the court. The complaint shall state a description of the property to be forfeited and the reasons for forfeiture under this part.
- (b)** If personal property is sought to be forfeited, the complaint shall state the date the forfeiture warrant was issued. However, no complaint shall be dismissed for defects or insufficiencies in the forfeiture warrant. The complaint shall be served by registered mail at the last known address of the owner, if known, or the person in possession at the time of seizure. In the event the owner or possessor of the property does not answer the complaint, the state may move for a default judgment. An interest holder shall, however, be served with the complaint for forfeiture prior to any disposition of the property.
- (c)** The court shall proceed as soon as practicable to a hearing and determination of the issue of forfeiture. The state shall notify the appropriate state official or commissioner as to the pendency of the judicial forfeiture action when such property is pending administrative forfeiture action. The filing of a complaint under this section shall operate as a stay of any pending administrative forfeiture proceedings. The state shall have the burden to prove by a preponderance of the evidence that the property is subject to forfeiture under this part and that one (1) or more acts described in § 39-11-703 giving rise to forfeiture occurred after June 27, 1998, regardless of when the property was originally acquired, as long as the owner's interest in the property appreciated following the commission of an act giving rise to forfeiture. The forfeiture action shall be commenced within five (5) years after the conduct giving rise to forfeiture terminates or the cause of action accrues, whichever is later. Any party who claims an interest in the property subject to forfeiture must first establish by a preponderance of the evidence that the party is an owner or interest holder in the property seized before

other evidence is taken. The claimant has the burden of establishing standing to assert the claim. Notwithstanding any other provision of law, no other claims, pendent claims or counterclaims may be filed in an action for forfeiture under this part.

(d) If real or personal property of a criminal defendant is to be forfeited as part of a criminal prosecution, the indictment or information must contain notice in a separate count that the state will seek forfeiture of property under the provisions of this part and all property subject to forfeiture must be generally described within the separate count. By agreement of the state and the defendant, a general sessions court may enter upon the judgment of the case that the property is to be forfeited or returned. The state must establish by a preponderance of the evidence that the property is subject to forfeiture under this part and that one (1) or more acts described in § 39-11-703 giving rise to forfeiture occurred after June 27, 1998, regardless of when the property was originally acquired, as long as the defendant's interest in the property was acquired or appreciated following the commission of an act giving rise to forfeiture. As soon as practicable after entering a guilty verdict or accepting a plea of guilty or nolo contendere on any count in an indictment, presentment, or information with regard to which criminal forfeiture is sought, the court shall determine whether the state has established that the property is subject to forfeiture. The court's determination may be based on evidence already in the record, including any written plea agreement, or if forfeiture is contested on evidence or information presented by the parties at a sentencing hearing. Upon the request by the state or the defendant in a case in which a jury returns a verdict of guilty, the jury shall determine in a bifurcated hearing whether the state has established that the property is subject to forfeiture. The state and defendant may introduce evidence at the forfeiture hearing. If the jury or court finds that the state has met its burden of proof from all the evidence in the case, then each property determined to be subject to forfeiture shall be designated in a special verdict and forfeited in accordance with this part. The criminal forfeiture action shall be charged within five (5) years after the conduct giving rise to forfeiture terminates. If a third party who is not a defendant in the criminal action has an interest in any of the property described in the criminal forfeiture count of the indictment or information, then the state shall determine the rights of the third party in a separate civil forfeiture action under this part.

(e) In establishing a preponderance of the evidence for forfeiture, a rebuttable presumption exists that the property of any person is subject to forfeiture, if the state establishes all of the following:

- (1) The conduct giving rise to forfeiture occurred;
- (2) The person acquired the property during the period of the conduct giving rise to forfeiture or within a reasonable time after that period; and
- (3) There is no likely source for the property other than the conduct giving rise to forfeiture.

(f) Property subject to forfeiture may be located in any county or state. Upon a finding by the court that the evidence establishes that the property is subject to forfeiture, the judge shall enter a judgment of forfeiture of all property subject to forfeiture and shall order that title to the property be vested in the state of Tennessee from the date that the conduct that gave rise to the forfeiture occurred, subject to any exemptions provided for in this part.

(g) Upon entry of the judgment of forfeiture and the recording of the judgment in the county and state where the property is located, title to the property shall vest in the state and shall thereafter be disposed of as provided for in §§ 39-11-713 and 39-11-714. If the property cannot be located or is beyond the jurisdiction of the court, the court shall enter a judgment against the owner equal to the value of the property ordered to be forfeited. The court may use its contempt powers to enforce any orders of forfeiture of property located beyond the jurisdiction of the court, and other orders in furtherance of the purpose of this part.

[Acts 1998, ch. 979, § 8; 2001, ch. 381, § 2.]

APPENDIX H

2010 Tennessee Code
Title 40 - Criminal Procedure
Chapter 33 - Forfeitures
Part 2 - Forfeiture Procedures
Generally
40-33-201 - Application.

40-33-201. Application.

All personal property, including conveyances, subject to forfeiture under the provisions of § 39-14-307, § 47-25-1105, § 53-11-451, § 55-10-403(k), § 55-50-504(h), § 57-3-411, § 57-5-409, § 57-9-201, § 67-4-1020 or § 70-6-202, shall be seized and forfeited in accordance with the procedure set out in this part.

[Acts 1994, ch. 925, § 1; 1996, ch. 910, § 3; 1996, ch. 959, § 2.]

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APPENDIX I

2010 Tennessee Code
Title 40 - Criminal Procedure
Chapter 33 - Forfeitures
Part 2 - Forfeiture Procedures
Generally

40-33-202 - Part definitions.

40-33-202. Part definitions.

As used in this part, unless the context otherwise requires:

(1) **Applicable agency** means the agency, board, commission or department charged by law or permitted by agreement with conducting the forfeiture proceeding for the particular property seized; and

(2) **Secured party** means the holder of a security interest in the seized property acquired in the ordinary course of business within the meaning of § 47-9-102(a) and shall include a recourse party under the terms of a financing agreement.

[Acts 1994, ch. 925, § 1; 2000, ch. 846, § 27.]

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APPENDIX J

2010 Tennessee Code
Title 40 - Criminal Procedure
Chapter 33 - Forfeitures
Part 2 - Forfeiture Procedures
Generally
40-33-203 - Seizure.

40-33-203. Seizure.

- (a)** Upon effecting a seizure, the seizing officer shall prepare a receipt titled a Notice of Seizure. The notice of seizure shall be a standard form promulgated by the applicable agency. The applicable agency may adopt an existing notice of seizure form.
- (b) (1)** Upon seizure of a conveyance, the seizing officer shall make reasonable efforts to determine the owner or owners of the property seized as reflected by public records of titles, registrations and other recorded documents.
- (2)** If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure does not have an ownership interest in the vehicle, the seizing officer shall, from the vehicle's manifest, bill of lading or public records of titles, registrations and other recorded documents, make reasonable efforts to determine the owner of the conveyance and notify the owner thereof of the seizure. Unless the cargo of the commercial vehicle or common or contract carrier is contraband or subject to forfeiture under some other provision of state or federal law, the cargo is not subject to forfeiture under the provisions of this part and, upon the request of the owner of the conveyance, shall immediately be released by the seizing agency to the owner or transporting agent.
- (3)** If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure has an ownership interest in

the vehicle, the seizing officer shall, from the vehicle's manifest or bill of lading, make reasonable efforts to determine the common or contract carrier responsible for conveying the cargo and notify the carrier of the seizure. Unless the cargo of the commercial vehicle or common or contract carrier is contraband or subject to forfeiture under some other provision of state or federal law, the cargo is not subject to forfeiture under the provisions of this part and, upon the request of the owner of the cargo, shall immediately be released by the seizing agency to the owner or transporting agent.

(4) If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure does not have an ownership interest in the vehicle, the seizing officer shall, from the vehicle's manifest, bill of lading or public records of titles, registrations and other recorded documents, make reasonable efforts to determine the owner of the conveyance and notify the owner of the conveyance of the seizure. Unless the interest of the owner of the commercial vehicle or common or contract carrier is subject to forfeiture under § 40-33-210(a)(2), the vehicle or carrier is not subject to forfeiture under the provisions of this part, the seizing officer shall not seek a forfeiture warrant and, upon the request of the owner of the vehicle or carrier, shall immediately be released by the seizing agency to the owner or transporting agent. For purposes of this subsection (b), commercial vehicle includes a private passenger motor vehicle that is used for retail rental for periods of thirty-one (31) days or less.

(c) Upon the seizure of any personal property subject to forfeiture pursuant to § 40-33-201, the seizing officer shall provide the person found in possession of the property, if known, a receipt titled a Notice of Seizure. The notice of seizure shall contain the following:

(1) A general description of the property seized and, if the property is money, the amount seized;

(2) The date the property was seized and the date the notice of seizure was given to the person in possession of the seized property;

(3) The vehicle identification number (VIN) if the property seized is a motor vehicle;

(4) The reason the seizing officer believes the property is subject to seizure and forfeiture;

(5) The procedure by which recovery of the property may be sought, including any time periods during which a claim for recovery must be submitted; and

(6) The consequences that will attach if no claim for recovery is filed within the applicable time period.

[Acts 1994, ch. 925, § 1; 1997, ch. 532, § 1.]

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APPENDIX K

2010 Tennessee Code

Title 40 - Criminal Procedure

Chapter 33 - Forfeitures

Part 2 - Forfeiture Procedures

Generally

40-33-204 - Forfeiture warrant.

40-33-204. Forfeiture warrant.

(a) Once personal property is seized pursuant to an applicable provision of law, no forfeiture action shall proceed unless a forfeiture warrant is issued in accordance with this section by a general sessions, circuit, criminal court or popularly elected city judge. The forfeiture warrant shall authorize the institution of a forfeiture proceeding under this part. As used in this subsection (a), □popularly elected city judge□ means a licensed attorney who is elected to the office of city judge pursuant to title 16, chapter 18, part 2.

(b) The officer making the seizure shall apply for a forfeiture warrant by filing a sworn affidavit within five (5) working days following the property seizure. The forfeiture warrant shall be based upon proof by affidavit and shall have attached to it a copy of the notice of seizure. The hearing on the application for a forfeiture warrant shall be ex parte and shall be recorded. It is the duty of the court to maintain the recording. Certified copies of the proceeding shall be made available to any party requesting them, and the same shall be admissible as evidence. The affidavit in support of a forfeiture warrant shall be sworn to and state the following:

(1) The legal and factual basis making the property subject to forfeiture;

(2) If the owner or co-owner of the property was not the person in possession of the property at the time of seizure and can be determined from public records of titles, registrations or other recorded documents, the affidavit shall state with particular

specificity the officer's probable cause for believing that the owner or co-owner of the property knew that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture as well as the legal, and factual basis for forfeiture of the interest; and

(3) If the interest of a secured party with a duly perfected security interest as reflected in the public records of titles, registrations or other recorded documents, is sought to be forfeited, the affidavit shall state with particular specificity the officer's probable cause that the secured party's interest in the property is nevertheless subject to forfeiture as well as the legal and factual basis for forfeiture of the interest.

(c) (1) The judge shall issue the forfeiture warrant if the judge finds that the offered proof establishes probable cause to believe that:

(A) The property is subject to forfeiture; and

(B) If the property is owned by one whose interest is described in public records of titles, registrations or other recorded documents, that the owner's interest is subject to forfeiture under the applicable provision of law.

(2) If the seizing officer asserts to the judge that the officer was unable to determine the owner of the seized property or whether the owner's interest is subject to forfeiture within the required five-day period, the judge may grant up to ten (10) additional days to seek a forfeiture warrant if the judge finds that the seizing officer has:

(A) Exercised due diligence and good faith in attempting to determine the owner of the property or whether the owner's interest is subject to forfeiture; and

(B) Made a factual showing that because of the existence of extraordinary and unusual circumstances an exception to the five-day forfeiture warrant requirement is justified.

(3) General sessions judges may authorize magistrates or judicial commissioners to issue forfeiture warrants. Prior to the authorization, the judges shall train and certify that the magistrates or judicial commissioners understand the procedure and requirements relative to the issuance of a forfeiture warrant.

(d) If the person in possession of the property is not the registered owner as determined from public records of titles, registrations or other recorded documents, the judge may consider other indicia of ownership that proves that the possessor is nonetheless an owner

of the property. Other indicia of ownership shall include, but is not limited to, the following:

- (1)** How the parties involved regarded ownership of the property in question;
- (2)** The intentions of the parties relative to ownership of the property;
- (3)** Who was responsible for originally purchasing the property;
- (4)** Who pays any insurance, license or fees required to possess or operate the property;
- (5)** Who maintains and repairs the property;
- (6)** Who uses or operates the property;
- (7)** Who has access to use of the property; and
- (8)** Who acts as if they have a proprietary interest in the property.

(e) If the owner or co-owner of the property was not the person in possession of the property at the time of the seizure and can be determined from public records of titles, registrations or other recorded documents, the judge shall put the seizing officer under oath and ask the following questions:

- (1)** What is the officer's probable cause that the owner or co-owner of the property knew that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture;
- (2)** What is the officer's probable cause that the co-owner or co-owners who are not in possession of the property at the time it was seized were co-conspirators to the activity making the property subject to forfeiture; and
- (3)** Any other questions necessary to determine the legal and factual basis for forfeiture.

(f) If a secured party's interest is sought to be forfeited, the judge shall put the seizing officer under oath and ask the following questions:

- (1)** What is the officer's probable cause that the secured party is a co-conspirator to the activity making the property subject to forfeiture;
- (2)** Did the secured party at the time the interest attached, have actual knowledge of the intended illegal use of the property; and

(3) Any other question deemed necessary to determine the legal and factual basis for forfeiture of the secured party's interest.

(g) Upon issuance of the forfeiture warrant, the judge shall retain the affidavit relied upon in support of the warrant and the officer shall, within seven (7) working days, send the warrant, a copy of the affidavit and the notice of seizure to the applicable agency. By signing and issuing the forfeiture warrant, the judge is affirming that the required finding of probable cause necessary to issue the warrant has been made. Upon receipt of the documents, the applicable agency shall notify any other owner, as may be determined from public records of titles, registrations or other recorded documents, or secured party that a forfeiture warrant has been issued. Upon receipt of the notice of seizure and forfeiture warrant and after interviewing any witnesses, the applicable agency shall release the property if there is no legal and factual basis for forfeiture. The seizing agency shall maintain a copy of the notice of seizure for all property seized at its main office and the notices and receipts shall be public records.

(h) If no forfeiture warrant is issued, and the property is not needed for evidence in a criminal proceeding, the seizing agency shall immediately return the property to the owner, as determined from public records of titles, registrations or other recorded documents, or if the owner cannot be determined, to the person in possession of the property at the time of seizure.

(i) Upon the request of any general sessions, circuit, criminal court or popularly elected city judge, the administrative office of the courts shall provide a cassette tape recorder for the purpose of recording the hearing on the application for a forfeiture warrant. As used in this subsection (i), □popularly elected city judge□ means a licensed attorney who is elected to the office of city judge pursuant to title 16, chapter 18, part 2.

[Acts 1994, ch. 925, § 1; 1998, ch. 1070, §§ 1-3; 1999, ch. 124, §§ 1, 2.]

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APPENDIX L

2010 Tennessee Code
Title 40 - Criminal Procedure
Chapter 33 - Forfeitures
Part 2 - Forfeiture Procedures
Generally
40-33-205 - Security interests.

40-33-205. Security interests.

(a) If a secured party with a duly perfected security interest receives notification pursuant to § 40-33-204(g) that a forfeiture warrant has been issued with regard to the secured property, the secured party must submit proof of the security interest to the applicable agency within thirty (30) days of receipt of the notification in order for the provisions of this subsection (a) to apply. A secured party with a duly perfected interest or any successor in interest to the secured party who does not receive notice of intent to forfeit the interest pursuant to § 40-33-204(b)(3), need not file a claim to preserve any right the party may have to the property. Upon receiving proof of a security interest, no cost bond or other pleadings need be filed by the secured party or successor in interest in order to protect its interest in the seized property or to assert a claim to the property as provided in § 40-33-206. If the applicable agency notifies a secured party that it intends to seek forfeiture of the secured party's interest, it shall seek a forfeiture warrant against the secured party as provided in § 40-33-204(b). Upon receiving notice that a forfeiture warrant has been issued, the secured party is required to file a claim for the property as provided in this part.

(b) Any secured party, other than one described in subsection (a), or any successor in interest to the secured party may file a claim for seized property by complying with the provisions of § 40-33-206, within thirty (30) days of the date the forfeiture warrant is issued.

APPENDIX M

2010 Tennessee Code

Title 40 - Criminal Procedure

Chapter 33 - Forfeitures

Part 2 - Forfeiture Procedures

Generally

40-33-206 - Claims.

40-33-206. Claims.

- (a)** Any person asserting a claim to any property seized pursuant to the provisions of law set out in § 40-33-201, and described on the notice of seizure, may within thirty (30) days of being notified by the applicable agency that a forfeiture warrant has issued, file with the agency a written claim requesting a hearing and stating the person's interest in the seized property for which a claim is made. The claims may be on forms provided by the applicable agency.
- (b) (1)** Except as provided in § 40-33-205(a), with the claim the claimant shall also file a cash bond or attorney or corporate surety bond in the sum of three hundred fifty dollars (\$350), the bond being made payable to the state of Tennessee; and
 - (2)** An indigent person may file a claim in forma pauperis by filing with the claim an affidavit stating that the person is unable to bear the cost of the proceeding.
- (c)** If a claim or proof of a security interest is not filed with the applicable agency within the time specified by this part, the seized property shall be forfeited and disposed of as provided by law.

[Acts 1994, ch. 925, § 1.]

APPENDIX N

2010 Tennessee Code
Title 40 - Criminal Procedure
Chapter 33 - Forfeitures
Part 2 - Forfeiture Procedures
Generally
40-33-213 - Appeals Venue.

40-33-213. Appeals Venue.

- (a)** The party aggrieved by the decision of the applicable agency may seek judicial review of the decision by filing a written notice of review. The reviewing court shall use the preponderance of evidence standard in determining whether to sustain or reverse the final order of the applicable agency. The burden of proof on review shall be the same as in the proceedings before the applicable agency.
- (b)** Except as otherwise provided in this section, an appeal under this part shall be conducted in the same manner as is provided in § 4-5-322, for a contested case hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.
- (c)** A notice of review may, at the election of the aggrieved party, be filed in the circuit court or chancery court of Davidson County.

[Acts 1994, ch. 925, § 1.]

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APPENDIX O

2010 Tennessee Code
Title 40 - Criminal Procedure
Chapter 33 - Forfeitures
Part 2 - Forfeiture Procedures
Generally

40-33-215 - Cause of action against seizing authority in cases of bad faith.

40-33-215. Cause of action against seizing authority in cases of bad faith.

(a) A person who has property seized in accordance with the provisions of this part shall have a cause of action against the seizing agency if the seizing officer acted in bad faith in seizing or failing to return property seized pursuant to this part.

(b) A person who prevails in an action against a seizing agency pursuant to this section shall be entitled to:

(1) Reasonable attorney fees and court costs necessarily incurred in seeking the return of the seized property and in bringing the action pursuant to this section; and

(2) Monetary damages resulting from the improper seizure of the property.

(c) Monetary damages recoverable under this section shall be limited to the rental value of property similar to that which was seized for the period of time it was seized but in no event shall the damages exceed the value of the seized property.

(d) For the purposes of this section, a seizing officer acts in bad faith when the officer acts intentionally, dishonestly, or willfully or the officer's actions have no reasonable basis in law or fact in regards to the seizure or failure to return the property seized.

APPENDIX P

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2010 Tennessee Code

Title 53 - Food, Drugs And Cosmetics

Chapter 11 - Narcotic Drugs and Drug Control

Part 2 - Confiscation

53-11-201 - Procedure in confiscation.

53-11-201. Procedure in confiscation.

(a) (1) (A) In all cases of seizure of any narcotic drugs or marijuana or any vehicle, aircraft or boat or other property subject to forfeiture under this chapter, the officer or other person making the seizure shall deliver a receipt to the person, if any, found in possession of the property or conveyance.

(B) The receipt shall state a general description of the seized property or conveyance, the reasons for the seizure, the procedure by which recovery of the property or conveyance may be sought, including the time period in which a claim for recovery must be presented, and the consequences of failing to file within the time period.

(C) If the person found in possession of the conveyance is not the sole unencumbered owner of the conveyance, the department of safety shall make a reasonable effort to notify the owner or lienholder of the seizure by furnishing all parties known to have an interest in the conveyance with a copy of the receipt.

(D) A copy of the receipt shall be filed in the office of the department of safety and shall be open to the public for inspection.

(2) In all cases of seizure under subdivision (a)(1) involving a commercial vehicle or common carrier, any cargo or products transported by the commercial vehicle or common carrier shall not be subject to forfeiture, unless the cargo or products are otherwise subject to forfeiture under this chapter, or any other law of this state or the federal government. The cargo or products shall, upon request, immediately be made available for release to the owner or transporting agent.

(b) (1) All property seized and forfeited under this chapter shall be sold at public sale by the commissioner of general services when seized by an agency of the state or a campus police officer as defined in § 49-7-118, or, if seized by a county or municipality, by the seizing agency of the county or municipality when the seized and forfeited property has been released by the commissioner of safety as now authorized by law.

(2) (A) However, any vehicle seized by an agency of the state and forfeited under this chapter may, with the permission of the commissioner of safety and under terms and conditions approved by the commissioner of safety, be used, for a period of time not to exceed one (1) year, in the drug enforcement program of the state.

(B) No vehicle seized by an agency of the state and forfeited under this chapter shall be used in the county or municipality in which it was seized.

(C) Notwithstanding subdivision (b)(2)(B) to the contrary, any vehicle seized by a county or municipal agency and forfeited under title 40, chapter 33, part 2, may be used in the local drug enforcement program for a period not to exceed five (5) years.

(c) (1) Any person claiming any property seized as contraband goods may, within thirty (30) days after receipt of notification of seizure, file with the commissioner at Nashville a claim in writing, requesting a hearing and stating the person's interest in the articles seized.

(2) The claimant shall also file with the claimant's claim a cost bond with one (1) or more good and solvent sureties in the sum of two hundred fifty dollars (\$250), the bond being made payable to the state.

(3) An indigent person may file the claim in forma pauperis by filing with the claim an affidavit stating that the indigent person is unable to bear the cost of the proceeding.

(d) (1) (A) Within thirty (30) days from the day the claim is filed, the commissioner shall establish a hearing date and set the case on the docket.

(B) Nothing in subdivision (d)(1)(A) shall be construed as requiring the hearing to be conducted within the thirty-day period.

(2) At each hearing, the state shall have the burden of proving by a preponderance of the evidence that the seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture under this chapter, and failure to carry the burden of proof shall operate as a bar to any forfeiture under this chapter.

(e) (1) If the ruling of the commissioner is favorable to the claimant, the commissioner shall deliver to the claimant the vehicle and any other property seized that is not contraband, and the claimant shall not be required to pay any of the expenses incurred in the storage, transportation, and impoundment of the seized property.

(2) If the ruling of the commissioner is adverse to the claimant, the commissioner shall proceed to sell or dispose of the contraband goods in accordance with this section and the expenses incurred in the storage, transportation, and impoundment, of the property shall be adjudged as part of the cost of the proceeding in any manner the commissioner determines.

(f) (1) Whenever, in any proceeding under this section, a claim is filed for any property seized, as provided in this section, by an owner or other person asserting the interest of the owner, the commissioner shall not allow the claim unless and until the claimant proves that the claimant:

(A) Has an interest in the property, which the claimant acquired in good faith; and

(B) Had at no time any knowledge or reason to believe that it was being or would be used in violation of the laws of the United States or of the state relating to narcotic drugs or marijuana.

(2) Whenever, in any proceeding under this section, a claim is filed for any property seized, as provided in this section, by a person who is the holder of a security interest or other claim arising out of a contract or agreement, the commissioner shall not allow the claim unless and until the claimant proves that the claimant has an interest in the property, which the claimant acquired in good faith. An interest that is acquired in the ordinary course of business shall be presumed to be in good faith unless the commissioner receives evidence that the holder of the security interest had knowledge, at the time the interest attached, of the intended illegal use of the vehicle or was a co-conspirator in furtherance of the illegal activity. A holder of a security interest that is other than a natural person shall be considered a co-conspirator for purposes of this section, if evidence shows that an officer,

employee or agent of the holder acting within the scope of employment is a co-conspirator, and the holder either:

- (A)** Has actual knowledge of the illegal activities of the officer, employee or agent from an individual other than the officer, employee or agent and fails to take appropriate action; or
- (B)** Has failed to reasonably supervise or monitor the activities of the holder's officer, employee or agent.

(3) In the event the interest of the owner is forfeited, as provided in subdivision (f)(1), and the interest of the holder of a security interest is not forfeited as provided in subdivision (f)(2), the commissioner may, at the request of the holder of the security interest, return the property to the holder for disposition in accordance with the applicable security agreement or other contract. If the commissioner does not return the property to the holder, the forfeiture shall be subject to the holder's interest.

(g) Pending any proceeding to recover a vehicle, aircraft or boat seized under this chapter, the commissioner may order delivery of the vehicle, aircraft or boat to any claimant who shall establish the claimant's right to immediate possession of the vehicle, aircraft or boat, and who shall execute, with one (1) or more sureties approved by the commissioner, and deliver to the commissioner, a bond in favor of the state and for the payment of the NADA retail value of the vehicle, aircraft or boat as of the time of the hearing, and conditioned further that, if the vehicle, aircraft or boat is not returned at the time of hearing, the bond shall stand in lieu of and be forfeited in the same manner as the vehicle, aircraft or boat.

(h) (1) The commissioner, in the commissioner's discretion, is authorized to appoint or designate a hearing officer to sit, and set the case on the docket, as the hearing officer at the request and in the absence of the commissioner for the purpose of conducting the hearing as the commissioner may deem necessary.

(2) The hearing officer designated by the commissioner shall make findings of fact, conclusions of law, and recommendations for the issuance of the proposed order based on the findings, conclusions and recommendations.

(3) If the commissioner concurs, the commissioner shall issue the order, or the commissioner may, upon review of the record, make findings, conclusions, and issue an order that, in the commissioner's discretion, the record justifies.

(4) The commissioner, personally, may hold hearings that the commissioner deems proper.

(5) The hearing officer is likewise empowered to subpoena witnesses and compel their attendance and the production of records, memoranda, papers and other documents at any hearing authorized under this section.

(i) (1) At all hearings provided for in this section, the commissioner or the hearing officer shall provide a stenographer or court reporter to take a stenographic record of the evidence adduced at the hearing.

(2) The claimant shall be entitled to a copy of the stenographic record, upon application for a copy and upon paying the reasonable costs of the copy to be fixed by the commissioner.

(j) The commissioner may make or publish other and further procedural rules and regulations, not inconsistent with this section, that the commissioner deems proper, governing any hearing provided for in this section.

(k) If a law enforcement agency seizes a motor vehicle as the result of a violation of the drug control law, the agency may elect whether to go forward with the forfeiture proceeding through either an administrative agency or through a court having civil jurisdiction in the county where the seizure occurred.

[Acts 1955, ch. 83, § 4; 1959, ch. 304, § 1; impl. am. Acts 1961, ch. 97, § 5; impl. am. Acts 1972, ch. 543, § 7; Acts 1973, ch. 358, §§ 1-3; 1976, ch. 499, § 1; T.C.A., § 52-1404; Acts 1986, ch. 738, § 3; 1989, ch. 475, §§ 1, 2; 1990, ch. 1037, § 1; 1992, ch. 842, §§ 1-5; 1993, ch. 218, § 1; 1995, ch. 514, § 1; 2007, ch. 106, § 5.]

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APPENDIX Q

2010 Tennessee Code

Title 53 - Food, Drugs And Cosmetics

Chapter 11 - Narcotic Drugs and Drug Control

Part 4 - Criminal Penalties and Enforcement

53-11-451 - Goods subject to forfeiture Seizure Disposition.

53-11-451. Goods subject to forfeiture Seizure Disposition.

(a) The following are subject to forfeiture:

(1) All controlled substances that have been manufactured, distributed, dispensed or acquired in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(2) All raw materials, products and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(3) All property that is used, or intended for use, as a container for property described in subdivision (a)(1) or (a)(2);

(4) All conveyances, including aircraft, vehicles or vessels that are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of property described in subdivision (a)(1) or (a)(2), but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section, unless it appears

that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without the owner's knowledge or consent;

(C) A conveyance is not subject to forfeiture for a violation of § 39-17-418(a) or (b) or § 39-17-425; and

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes and data that are used, or intended for use, in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(6) **(A)** Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, compiled in part 3 of this chapter, this part and title 39, chapter 17, part 4, all proceeds traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act;

(B) No property shall be forfeited under subdivision (a)(6)(A), to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent; and

(7) All drug paraphernalia as defined by § 39-17-402.

(b) Property subject to forfeiture under part 3 of this chapter and this part, or title 39, chapter 17, part 4, may be seized by the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable upon process issued by any circuit or criminal court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(3) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable has probable cause to believe that the property was used or is intended to be used in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4.

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable, subject only to the orders and decrees of the circuit or criminal court. When property is seized under parts 3 of this chapter and this part, or title 39, chapter 17, part 4, the seizing authority may:

(1) Place the property under seal;

(2) Remove the property to a place designated by the seizing authority;

(3) Require the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(4) Regardless of any other method of disposition of property contained in this chapter, use of the property taken or detained, with permission of the court and under the terms

and conditions approved by the court, for use in the drug enforcement program of the county in which the goods are seized, or, with approval of the court having jurisdiction over the property, sell the property and utilize the proceeds for the drug enforcement program of the county in which the property was seized, or both;

(A) In the case of property seized by the Tennessee bureau of investigation, the director of the bureau is authorized to designate, in writing, any part of the property for use by the bureau for any period of time, subject to inventory, management and disposition as provided by law;

(B) In the case of an aircraft seized by the bureau, the director is also authorized to designate, in writing, the property for transfer to and use by the department of general services subject to inventory, management and disposition as provided by law. If an aircraft is not sold, but is to be transferred to another state governmental entity, the transfer shall be approved by the commissioner of finance and administration;

(C) The proceeds from any sale conducted under this chapter of forfeited property seized by the bureau and not designated for its use, or not transferred to the department of general services as provided in subdivision (d)(4)(B), shall be paid to the state treasurer to be used only as appropriated by the general assembly.

(e) When property is forfeited under part 3 of this chapter and this part, or title 39, chapter 17, part 4, the director or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable shall remove it for disposition in accordance with law.

(f) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4, are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I that are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in Schedules I, II and VI may be derived that have been planted or cultivated in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4, or of which the owners or cultivators are unknown, or that are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the commissioner of safety, the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that the person is the holder of appropriate registration, constitutes authority for the seizure and forfeiture of the plants.

(i) Confiscation proceedings under part 3 of this chapter and this part, or title 39, chapter 17, part 4, shall be conducted in accordance with part 2 of this chapter.

(j) Any property of the type set forth in subdivisions (a)(1) and (7) that is in the custody and possession of a clerk of any court of this state by virtue of the property having been held as evidence or exhibits in any criminal prosecution where all appeals or potential appeals of a judgment have ended, or when the case has been dismissed or otherwise brought to a conclusion, shall be disposed of as follows:

(1) The clerk of the court having custody of the property to be disposed of shall, no less than once annually, inventory the property and prepare a list of the property proposed to be destroyed with references to the cases involved and the name of the case, the case number and date when the property was used;

(2) The clerk shall submit the inventory list with a filed petition to the court and shall serve a copy of the petition upon the district attorney general. After determining that the listed property is not needed as evidence in any pending or potential judicial proceeding, the court shall order the property to be destroyed; and

(3) The clerk, or a deputy clerk that the clerk may designate, shall completely destroy each item by cutting, crushing, burning or melting and shall file, together with the petition and order relating to the destroyed property, an affidavit concerning the destruction, showing a description of each item, the method of destruction, the date and place of destruction, and the names and addresses of all witnesses to the destruction.

[Acts 1971, ch. 163, § 36; 1972, ch. 597, § 12; 1973, ch. 134, § 1; 1981, ch. 512, § 2; 1982, ch. 742, § 1; T.C.A., § 52-1443; Acts 1983, ch. 412, § 4; 1984, ch. 1005, § 4; 1986, ch. 783, § 1; 1989, ch. 192, § 1; T.C.A., § 53-11-409; Acts 1994, ch. 925, § 2; 2007, ch. 106, §§ 7-9.]

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