



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-13-00172-CR

AVIS T. SANDERS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 4th District Court
Rusk County, Texas
Trial Court No. CR12-161

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

Avis T. Sanders was convicted for the second degree felony of online solicitation of a minor under Section 33.021(b) of the Texas Penal Code and sentenced to seven years' imprisonment. *See* TEX. PENAL CODE ANN. § 33.021(b) (West 2011).

On appeal, Sanders has presented several issues, each addressing the issue of whether his conviction was predicated on a void penal statute. After Sanders' conviction, in a unanimous opinion, the Texas Court of Criminal Appeals found the statute prohibiting the conduct of which Sanders was charged facially unconstitutional. *Ex parte Lo*, No. PD-1560-12, 2013 WL 5807802, at *1 (Tex. Crim. App. Oct. 30, 2013). Under the terms of that opinion, the act is not a criminal offense. Unconstitutional statutes are void from their inception. *Lapasnick v. State*, 784 S.W.2d 366, 368 (Tex. Crim. App. 1990). Thus, Sanders cannot be punished based on his conviction for violating a void statute.

The State has now filed its brief acknowledging that its prosecution was indeed based solely upon an unconstitutional penal statute, confessing error, and joining Sanders in praying for reversal of the judgment and sentence. Because of the unusual posture of this case, rather than submitting the case to this Court in twenty-one days pursuant to the Rules, we direct that it be submitted to this Court the date of this opinion.

We reverse the judgment, and consistent with the disposition of *Lo*, we direct the trial court to dismiss the indictment. As Sanders stands acquitted of all allegations and the State has

conceded error requiring reversal and because the statute on which he was convicted is void and cannot support a criminal conviction, we further direct that Sanders be promptly released from imprisonment.

Bailey C. Moseley
Justice

Date Submitted: March 5, 2014
Date Decided: March 6, 2014

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