



IN COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-84,102-01

EX PARTE JOHN ANDREW RAMOS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2009CR7094-W1
IN THE 399TH DISTRICT COURT FROM BEXAR COUNTY**

Per curiam. Yeary, J., not participating.

OPINION

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant pleaded nolo contendere to online solicitation of a minor and was sentenced to eight years' imprisonment. He did not appeal his conviction.

Applicant contends that the statute under which he was convicted was found to be unconstitutional, therefore he is actually innocent. This Court has held that when a statute is held to be unconstitutional, that does not mean that someone convicted under the statute is actually

innocent. *Ex parte Fournier*, WR-82,102-01 __ S.W.3d __ (Tex. Crim. App. Oct. 28, 2015).

However, Applicant is still entitled to relief. This Court, in *Ex parte Lo*, held unconstitutional the online solicitation of a minor statute for which Applicant was convicted. *Ex parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013). Applicant filed this habeas application based on the *Lo* decision and asks that his conviction be set aside. The State recommends that relief be granted in this cause. We agree.

Relief is granted. The judgment in Cause No. 2009CR7094 in the 399th District Court of Bexar County is set aside and the cause is remanded so the trial court can dismiss the indictment.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice—Correctional Institutions Division and Pardons and Paroles Division.

Delivered: December 16, 2015
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