



# **IN THE COURT OF CRIMINAL APPEALS OF TEXAS**

---

---

**NO. PD-1291-15**

---

---

**Ex parte JUSTIN RIVER CARTER, Appellant**

---

---

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW  
FROM THE THIRD COURT OF APPEALS  
COMAL COUNTY**

---

---

*Per curiam.*

## **OPINION**

Appellant was charged by indictment with violating two subsections of the terroristic threat provision. TEX. PENAL CODE §§ 22.07(a)(4); 22.07(a)(5). He filed a pretrial application for a writ of habeas corpus challenging the constitutionality of the subsections of the terroristic threat statute under which he was charged. At the hearing, evidence was presented that the indictment charges were based upon statements allegedly made by appellant on Facebook. The trial court denied relief after a hearing.

On appeal, appellant asserted that the trial court erred by failing to find the statutory subsections under which he was charged facially unconstitutional and

unconstitutional as applied to him. The court of appeals analyzed and rejected his challenge to the facial constitutionality of the provisions. *Ex parte Carter*, No. 03-14-00669-CR slip op. at 1-13 (Tex. App.–Austin, August 31, 2015)(not designated for publication). As to appellant’s as-applied challenge, the court of appeals held such claim, the resolution of which was dependent upon the facts of the case which had yet to be determined through trial, was not cognizable in a pretrial writ. *Id.* at 14-15.

Appellant has filed a petition for discretionary review in which he argues that this case should fall within a category of cases in which this Court has recognized exceptions to the general rule that pretrial writs claiming as-applied challenges are not cognizable.

When the court of appeals issued its opinion in this case, it did so without the benefit of this Court’s recent opinion in *Ex parte Perry*, No. PD-1067-15 (Tex. Crim. App. Feb. 24, 2016)(plurality op.), in which the Court examined the categories of as-applied challenges which might be held cognizable in a pretrial writ. Therefore, we vacate the judgment of the court of appeals and remand for that court to consider the Court’s discussion in *Perry* and the effect of *Perry*, if any, on its reasoning and analysis in this case.

Delivered May 25, 2016  
Do Not Publish