



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-81,434-01

EX PARTE KERRY BOOTH DOAN, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 11-02-01666-CR(1) IN THE 435TH DISTRICT COURT
FROM MONTGOMERY COUNTY**

Per curiam. YEARY, J., filed a dissenting opinion.

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 was convicted of online solicitation of a minor, TEX. PENAL CODE § 33.021(b), and sentenced to five years' imprisonment. He did not appeal his conviction.

In *Ex parte Lo*, we declared § 33.021(b) unconstitutional. *Ex parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013). In his first ground, Applicant contends that, in light of *Lo*, his conviction is no longer valid.

We agree. *Ex parte Chance*, 439 S.W.3d 918 (Tex. Crim. App. 2014). Relief is granted. The judgment in cause number 11-02-01666-CR in the 435th District Court of Montgomery County is set aside, and this cause is remanded to the trial court to 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: February 10, 2016
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