



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-82,510-02

EX PARTE NATHAN DEAN MILLER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1053472-A IN THE 176TH DISTRICT COURT
FROM HARRIS 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 pleaded guilty to online solicitation of a minor under Section 33.021(b) of the Texas Penal Code, and was sentenced to two years' imprisonment. He did not appeal his conviction.

Applicant contends that he is actually innocent, and that his conviction is void based on this Court's opinion in *Ex parte Lo*, 424 S.W.3d 10, 19 (Tex. Crim. App. 2013), holding that Section 33.021(b) is unconstitutionally overbroad. The trial court recommends that relief be granted.

This Court recently held that relief under the circumstances described by Applicant is not

available under an actual innocence theory. *Ex parte Fournier*, No. WR-82,102-01, ___ S.W.3d ___ (Tex. Crim. App. Oct. 28, 2015). However, Applicant is entitled to relief under *Lo* and our subsequent decision in *Ex parte Chance*, 439 S.W.3d 918 (Tex. Crim. App. 2014). Relief is granted. The judgment in Cause No. 1053472 in the 176th District Court of Harris County is set aside, and the cause is remanded so the trial court can dismiss the indictment. The trial court shall issue any necessary bench warrant within 10 days after the mandate of this Court issues.

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

Delivered: January 13, 2016
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