



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-82,867-02

EX PARTE DAVID RAY LEA, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 68268-A IN THE 239TH DISTRICT COURT
FROM BRAZORIA 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 improper photography without consent and was sentenced to two years' imprisonment in state jail. He did not appeal his conviction.

This Court, in *Ex parte Thompson*, held unconstitutional the improper photography statute for which Applicant was convicted. *Ex parte Thompson*, 442 S.W.3d 325 (Tex. Crim. App. 2014). Applicant filed this habeas application based on the *Thompson* decision and asks that his conviction

be set aside. Applicant alleges, *inter alia*, that he was convicted pursuant to a statute that has been found unconstitutional by this Court. *See Ex parte Thompson*, 442 S.W.3d 325 (Tex. Crim. App. 2014). The trial court recommends that relief be granted in this cause. We agree.

Relief is granted. The judgment in Cause No. 68268 in the 239th District Court of Brazoria County is set aside and Applicant is remanded to the custody of the Sheriff of Brazoria County to answer the charges as set out in the indictment so that the indictment may be disposed of in accordance with this Court's opinion in *Ex parte Thompson*. 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: April 6, 2016
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