



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-83,418-01

EX PARTE IAN PATRICK WHEELER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W-22281-A-1 IN THE 47TH DISTRICT COURT
FROM RANDALL 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 pled guilty under a plea agreement to online solicitation of a minor. He was sentenced to eight years' imprisonment.

Applicant argues that his conviction should be set aside because the statute of conviction was declared unconstitutional by this Court in *Ex parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013). He also argues that he should be found actually innocent. The trial court finds that Applicant is entitled to have the conviction set aside under *Ex parte Lo* but that he is not entitled to a finding of actual

innocence. This Court agrees. *See Ex parte Lo, supra; Ex parte Fournier*, 473 S.W.3d 789 (Tex. Crim. App. 2015). Relief is granted to set aside the conviction, but no finding of actual innocence is made.

The judgment in Cause No. 22281-A in the 47th District Court of Randall 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: April 13, 2016
Do not publish