



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-85,411-01

EX PARTE CHARLES MATTHEW SHAW, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. C-1-010800-1280420-A IN THE CRIMINAL DISTRICT COURT NO. 1
FROM TARRANT 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 in count one of the indictment and sentenced to ten years' imprisonment. TEX. PENAL CODE § 33.021(b). He was convicted in count two of the indictment with of online solicitation of a minor, but the prison sentence for that count was suspended.

In *Ex parte Lo*, this Court declared the statute of conviction, § 33.021(b), unconstitutional. *Ex parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013). The trial court finds that, in light of *Lo*,

Applicant's convictions are no longer valid. This Court agrees. *Ex parte Chance*, 439 S.W.3d 918 (Tex. Crim. App. 2014). Relief is granted as to count one of the indictment, which resulted in a prison sentence. Count two of the indictment, which prison sentence was suspended, must be challenged pursuant to Article 11.072 of the Texas Code of Criminal Procedure, which provides the habeas procedure in a community supervision case. *See Ex parte Hiracheta*, 307 S.W.3d 323 (Tex. Crim. App. 2010).

The judgment of conviction as to count one in cause number 1280420D in the Criminal District Court No. One of Tarrant County is set aside, and the cause is remanded to the trial court to dismiss that count of 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: September 14, 2016
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