



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. PD-499-16

GARY EDWARD VINES, Appellant

v.

THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE NINTH COURT OF APPEALS
MONTGOMERY COUNTY**

Per curiam.

OPINION

Appellant was convicted of violating a civil commitment order and sentenced to life in prison. He appealed. While his appeal was pending, the Texas Legislature passed S.B. 746, which amended Health & Safety Code § 841.085 to make the failure to comply with the terms of sex offender treatment a civil issue rather than a criminal offense. The savings

clause to S.B. 746 provided that the change was applicable to any conviction not yet final.

Appellate counsel did not argue that the savings clause to S.B. 746 de-criminalized Appellant's offense and applied to him because his conviction was not yet final. However, Appellant raised the issue in a *pro se* brief, and so did another inmate in an *amicus curiae* brief. The Court of Appeals opted not to consider either of those briefs, but said that, even if it did consider the argument, it would reject it based on its opinion in *Vandyke v. State*, 485 S.W.3d 507 (Beaumont 2015). That case held that the savings clause to S.B. 746 violated the Separation of Powers clause.

Appellant has filed a petition for discretionary review of this decision. We recently reversed the appellate court's opinion in *Vandyke*, holding instead that the savings clause to S.B. 746 does not violate the Separation of Powers clause. *Vandyke v. State*, No. PD-0283-16, 2017 Tex. Crim. App. LEXIS 1311 (Tex. Crim. App. December 20, 2017).

The Court of Appeals in the instant case did not have the benefit of our opinion in *Vandyke*. Accordingly, we grant Appellant's petition for discretionary review, vacate the judgment of the Court of Appeals, and remand this case to the Court of Appeals in light of our opinion in *Vandyke*.

DATE DELIVERED: February 7, 2018

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