



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-88,707-01

EX PARTE CYNTHIA STEWART, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2012-CR-2106-W-W1
IN THE 399TH DISTRICT COURT FROM BEXAR 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 and sentenced to six years' imprisonment. She did not appeal her conviction.

Applicant alleges that her conviction is based on an unconstitutional statute, and that she is actually innocent.

This Court, in *Ex parte Lo*, held unconstitutional the online solicitation of a minor statute for which Applicant was convicted. *Ex parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013). Applicant

filed this habeas application based on the *Lo* decision and asks that her conviction be set aside. The State recommends that relief be granted in this cause.

Relief is granted based on Applicant's claim that she was convicted under authority of an unconstitutional statute. Applicant is not entitled to relief on her actual innocence claim. *Ex parte Fournier*, 473 S.W.3d 789 (Tex. Crim. App. 2015). The judgment in Cause No. 2012CR2106W in the 399th District Court of Bexar 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: September 12, 2018
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