



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

**NO. WR-92,469-01**

**EX PARTE CALEB PATRICK BERNAL, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. F42292-B  
IN THE 18TH DISTRICT COURT FROM JOHNSON COUNTY**

**YEARY, J., filed a dissenting opinion in which SLAUGHTER, J., joined.**

### **DISSENTING OPINION**

Applicant, Caleb Patrick Bernal, was convicted of online solicitation of a minor in violation of former Section 33.021(b) of the Penal Code in 2008. TEX. PENAL CODE § 33.021(b). He was sentenced to two years' imprisonment. Applicant filed this writ of habeas corpus contending that the statute under which he was convicted was found unconstitutional. *See* TEX. CODE CRIM. PROC. art. 11.07. Applicant's sentence has since discharged; however, he contends that he is suffering collateral consequences due to his conviction.

Today, the Court grants Applicant post-conviction relief based on *Ex parte Lo*, in which the Court held Subsection (b) of the former online solicitation of a minor statute to

be unconstitutional. *See Ex parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013). As Applicant has not demonstrated that his conduct constituted protected speech such that the statute may be said to have operated unconstitutionally as applied to him, I disagree with the granting of relief. I therefore dissent from the Court's order granting summary post-conviction habeas corpus relief for the reasons stated in my dissenting opinions in *Ex parte Fournier*, 473 S.W.3d 789, 800–805 (Tex. Crim. App. 2015) (Yeary, J., dissenting), and *Ex parte Chavez*, 542 S.W.3d 583, 584–85 (Tex. Crim. App. 2018) (Yeary, J., dissenting).

FILED:  
DO NOT PUBLISH

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