



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

NO. WR-92,488-01

EX PARTE KENNETH EUGENE RICE JR., Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. F45892-B
IN THE 18TH DISTRICT COURT FROM JOHNSON COUNTY**

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

DISSENTING OPINION

Applicant was convicted of online solicitation of a minor in violation of former Section 33.021(b) of the Penal Code. TEX. PENAL CODE § 33.021(b). He was sentenced to ten years' imprisonment in count one of this cause. 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.

Today, the Court grants 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). But 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 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DO NOT PUBLISH

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