



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

NOS. PD-0073-12; 0074-12; 0075-12

EX PARTE COLLINS OMONDI NYABWA

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTEENTH COURT OF APPEALS
HARRIS COUNTY**

Per Curiam.

ORDER

Appellant was charged with three counts of improper photography. He filed a pretrial writ application, arguing that Penal Code § 21.15(b)(1) is facially unconstitutional. The Court of Appeals found no constitutional violation in the statute. *Ex parte Nyabwa*, Nos. 14-11-00250-CR, 14-11-00251-CR, 14-11-00252-CR, 2011 Tex. App. LEXIS 9721 (Tex. App. – Houston [14th Dist.] December 13, 2011). Appellant filed these petitions on January 13, 2012.

On February 7, 2012, the Court of Appeals withdrew its opinion and issued another opinion in its place. *Ex parte Nyabwa*, Nos. 14-11-00250-CR, 14-11-00251-CR, 14-11-00252-CR, Tex. App. LEXIS 974 (Tex. App. – Houston [14th Dist.] February 7, 2012). This used to be permitted by Rule 50 of the Texas Rules of Appellate Procedure. However, on July 12, 2011, Rule 50 was abolished, and Rule 68.7 was amended to provide that an appellate court must send the appellate record to this Court within 15 days of receiving notice that a petition for discretionary review has been filed. Once that 15-day period elapses, an appellate court loses authority to issue an opinion. *See Garza v. State*, 896 S.W.2d 192, 195 (Tex. Crim. App. 1995).

The Court of Appeals's opinion issued on February 7, 2012, which was more than 15 days after Appellant filed his petitions for discretionary review on January 13, 2012. It was untimely and therefore unauthorized under Rule 68.7 of the Texas Rules of Appellate Procedure. Accordingly, the court had no jurisdiction to issue that opinion. *See id.* Therefore, the Court of Appeals's opinion issued on February 7, 2012, is ordered withdrawn, and the original judgment and opinion of the Court of Appeals that issued on December 13, 2011, is reinstated.

Additionally, we refuse Appellant's petition for discretionary review dated January 13, 2012. We take no action on Appellant's subsequent petition dated March 2, 2012, as that petition addresses an opinion that has been withdrawn.

