

**Affirmed and Majority and Concurring Opinions filed August 1, 2023.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-21-00691-CR**

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**MARC ALEXANDER LEWIS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 184th District Court  
Harris County, Texas  
Trial Court Cause No. 1640910**

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**C O N C U R R I N G   O P I N I O N**

The majority declines to follow a previous precedential opinion from this court, *Pelcastre v. State*, 654 S.W.3d 579 (Tex. App.—Houston [14th Dist.] 2022, pet. ref'd) (panel consisting of JJ. Spain, Poissant, and Wilson). Seemingly based on nothing more than the existence of (1) a concurring opinion and (2) the refusal of a petition for discretionary review, the majority decides to follow the previous nonprecedential approach in *Moreno v. State*, No. 14-18-00113-CR, 2019 WL 2000905 (Tex. App.—Houston [14th Dist.] May 7, 2019, pet. ref'd) (mem. op., not

designated for publication) (panel consisting of JJ. Christopher, Jewell, and Hassan). I assume that the majority understands that the refusal of a petition for discretionary review means nothing more than four judges on the court of criminal appeals did not vote to grant the petition. Tex. R. App. P. 69.1.

I concur in the judgment, but do not join the majority's opinion. If there is a reason to overrule *Pelcastre*, then we should do that as the en banc court.

/s/ Charles A. Spain  
Justice

Panel consists of Chief Justice Christopher and Justices Jewell and Spain (Jewell, J., majority).

Publish — Tex. R. App. P. 47.2(b).