IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NO. WR-82,103-01

EX PARTE CHRISTOPHER TOBY DOWDEN, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1300886 IN THE 337TH DISTRICT COURT
FROM HARRIS COUNTY

***Per curiam*.**

O R D E R

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 pleaded guilty to online solicitation of a minor pursuant to Section 33.021(b) of the Texas Penal Code, and was sentenced to four years' imprisonment.

Applicant contends that he is actually innocent and was convicted of violating a void statute. We order that this application be filed and set for submission to determine whether a person who was convicted under a statute that was later declared unconstitutional is "actually innocent," as this Court

has interpreted that term. *See Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996); *State v. Wilson*, 324 S.W.3d 595 (Tex. Crim. App. 2010). The parties shall brief this issue. Oral argument is not permitted.

It appears that Applicant is represented by counsel. If that is not correct, the trial court shall determine whether Applicant is indigent. If Applicant is indigent and desires to be represented by counsel, the trial court shall appoint an attorney to represent Applicant. TEX. CODE CRIM. PROC. art 26.04. The trial court shall send to this Court, within 60 days of the date of this order, a supplemental transcript containing: a confirmation that Applicant is represented by counsel; the order appointing counsel; or a statement that Applicant is not indigent. All briefs shall be filed with this Court within 90 days of the date of this order.

Filed: October 1, 2014
Do not publish