No. 20-

In the Supreme Court of the United States

KENIN L. EDWARDS,

v.

THE HONORABLE MICHAEL L. ATTERBERRY; THE HONORABLE SCOTT J. BUTLER; RAMON ESCAPA; ERIC MYERS

ON PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

ROBERT J. HANAUER
Counsel of Record
PATRICK T. SHEETS
HANAUER LAW OFFICE, LLC
456 Fulton Street, Suite 200
Peoria, Illinois 61602
(309) 966-4423
rob@hanauerlaw.com

QUESTION PRESENTED

The question presented is:

1. Whether it is a violation of due process for the Illinois Supreme Court, after being fully advised in the premises, to abstain from addressing whether the trial court has criminal jurisdiction over Petitioner, thereby forcing Petitioner to proceed to a sentencing hearing and potential conviction and appeal in the absence of criminal jurisdiction.

PARTIES TO THE PROCEEDINGS

1. The Petitioner, who was also a petitioner in the Illinois Supreme Court and defendant in a criminal case in the circuit court of Schuyler County, Illinois, is Kenin L. Edwards, a citizen and resident of Tazewell County, Illinois.

2. The Respondent, the Honorable Michael L. Atterberry, is a Resident Circuit Judge of Menard County in the Eighth Judicial Circuit of Illinois. The Respondent, the Honorable Scott J. Butler, is a Resident Circuit Judge of Schuyler County in the Eighth Judicial Circuit of Illinois. The Respondent, Ramon Escapa, is the Schuyler County State's Attorney, and a resident, of Schuyler County in the Eighth Judicial Circuit of Illinois. The Respondent, Eric Myers, is a Illinois Conservation Police Officer and resident of the State of Illinois.

LIST OF RELATED PROCEEDINGS

People of the State of Illinois v. Kenin Edwards
Case No. 2016-CV-09

Kenin L. Edwards v. Honorable Michael L. Atterberry and Honorable Scott J. Butler, Judges of the Eighth Judicial Circuit
Docket No. 123370

Kenin Edwards v. Michael Atterberry, Scott Butler, Ramon Escapa, Eric Myers, Melissa Dennis, and John Heidinger each in his or her personal capacity, Michael Atterberry and Melissa Dennis each in his or her official capacity.
Case No. 4:19-cv-04109

Kenin Edwards v. Ramon Escapa
Case No. 2019-MR-19

Kenin Edwards v. Elaine Boyd and Brian Sorrell
Case No. 2019-MR-20

Kenin Edwards v. Illinois Department of Natural Resources, a statutorily created entity; Wayne Rosenthal, in his official capacity as Director; and M. Dennis, in her official capacity within the Illinois Department of Natural Resources and within the "Office of Law Enforcement."
Case No. 18-MR-98

Kenin Edwards v. Michael Atterberry, Scott Butler, Ramon Escapa, Eric Myers
Case No. 2019-MR-280

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Cases—Continued **Page(s)**

Illinois Statue and Administrative Rules:

Illinois Constitutional Provisions

Administrative Materials

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The Order of the Illinois Supreme Court (App. 1a) is denying Petitioner's Motion for Supervisory Order without explanation is included at App. 1a.

JURISDICTION

The Illinois Supreme Court entered its Order on October 31, 2019, denying Petitioner's Motion for Supervisory Order. (App. 1a.) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution, which provides, in relevant part, "No state shall . . . deprive any person of . . . liberty . . . without due process of law."

STATEMENT OF THE CASE

Petitioner Kenin Edwards is charged in Schuyler County, Illinois, with two counts of purported criminal violations of administrative rules. A jury returned guilty verdicts on both counts. The Circuit Court has not yet entered judgment on the verdicts.

Prior to trial, Mr. Edwards filed numerous pre-trial motions, including motions to dismiss. The first motion to dismiss attacked the State's initial Information on the basis of, *inter alia*, purporting to allege a violation of a criminal statute (225 ILCS 735/5) without alleging any facts that fell within the ambit of that statute.

After Mr. Edwards' first motion to dismiss was filed, the State sought and obtained leave to amend the Information. In the Amended Information, all citations to 225 ILCS 735/5 were eliminated. In their place, the State merely cited administrative regulations (17 Ill. Adm. Code

1535.1(b) and 17 Ill. Adm. Code 1535.60(a)), together with a purported rules-enabling statute that does not create a crime, namely, 225 ILCS 735/10, which provides that "[t]he Department may make such rules and regulations as may be necessary to carry out the provisions of this Act."

In response to the amendment, Mr. Edwards again filed numerous pre-trial motions, including motions to dismiss alleging, *inter alia*, the Circuit Court's lack of jurisdiction to adjudicate a criminal trial based upon regulations alone.

On January 23, 2017, Mr. Edwards filed a motion to dismiss the Amended Information and a supporting memorandum. Among other things, Mr. Edwards argued that 17 Ill. Adm. Rule 1535.1(b) is not a criminal offense. Respondent Honorable Scott J. Butler denied Mr. Edwards' motion but gave the State leave to amend the Amended Information until May 1, 2017. The State filed no such amendment on or before May 1, 2017.

On August 14, 2017, Mr. Edwards filed a Motion to Dismiss the Second Amended Information. Once again, Mr. Edwards contended, *inter alia*, that the trial court lacked subject-matter jurisdiction. Respondent Honorable Scott J. Butler denied the motion.

On October 10, 2017, Mr. Edwards filed a Supplement[1] to Objection to Lack of Re-Arraignment, Lack of Plea, Lack of Furnishing Copy of Second Amended Information to Defendant and Demand for Same. He argued, among other things, that the "Offense Table Code" prepared by the Administrative Office of the Illinois Courts does not list Section 10 of the Timber Buyers Licensing Act as a criminal offense. Respondent Honorable Scott J. Butler denied this objection and supplement as being moot.

---

[1] An objection had been filed previously.

During trial, at the close of the State's case, Mr. Edwards filed a Motion for Directed Verdict. Therein, he renewed all relevant prior motions and arguments. Respondent Honorable Michael L. Atterberry denied the motion.

To repeat, the State characterized the purported offenses in this case is "Unlawfully Acting as a Timber Buying Agent for Multiple Licensed Timber Buyers" in each version of a charging instrument—the latest of which was read verbatim to the jury at the beginning of trial. No such offense or charge is defined in either the Timber Buyers Licensing Act (225 ILCS 735/*et seq.*) or in Section 1535.1 of the administrative rules. The State apparently surmised this point toward the end of the trial. Then, during a jury-instruction conference, the State for the first time argued that the purported offenses should be called "Buying Timber without a License," since this is the moniker set forth in 17 Ill. Adm. Code 1535.1(b). No such description or elements appear in Section 10 of the Timber Buyers Licensing Act. The Second Amended Information was not amended to include this last-state change; the prosecution never requested leave to amend the charge. Mr. Edwards was never re-arraigned or asked to plead to the new description or elements set forth in jury instructions.

On February 15, 2018, after numerous jury instructions were given over Mr. Edwards' objection, he was found guilty on both counts by the jury—by the same jurors who heard the statement of the case, before trial, describing an alleged offense of "unlawfully acting as a timber buying agent for multiple licensed timber buyers." There is no good label for this turnabout without using the word "switcheroo". The Amended Information alleged, and the jury was read as the statement of the case, that Mr. Edwards was charged with "Unlawfully Acting as a Timber Buying Agent for Multiple Licensed Timber Buyers," in violation of Section 10 and administrative rules, then came

the "switcheroo" of the jury being instructed (supposedly) under Ill. Adm. Code 1535.1(b), not Section 10, for the alleged offense of "Buying Timber without a Timber Buyer's License." One cannot get a timber buyer's license in one's own name if one is listed as an authorized buyer on another person's license. The switcheroo thus evolved into an impossible suggestion that Mr. Edwards should have obtained a license himself; that is not possible while having the status of being a non-licensee who is listed on the license of a licensee (such as licensee Trent Copelen).

After the verdict was announced, Respondent Honorable Michael L. Atterberry entered an order stating that "the jury finds defendant guilty of [Count]I and [Count] II" and set the matter for a post-trial motion and sentencing hearing.

Petitioner subsequently filed a Motion for Supervisory Order and Complaint for Writ of Prohibition in the Supreme Court of Illinois. The Illinois Supreme Court denied Petitioner's Motion for Supervisory Order but allowed Petitioner leave to file a complaint for writ of prohibition. The Illinois Supreme Court stayed further proceedings in the circuit court pending disposition of the petition for writ of prohibition.

After full briefing schedule and oral argument, a four-justice majority of the Illinois Supreme Court denied Petitioner's Complaint for Writ of Prohibition without determining whether the Circuit Court, below, had proper subject matter jurisdiction over Petitioner. Rather, the majority found that Petitioner possessed an adequate remedy at law in that Petitioner had posttrial motions pending in the criminal case, and, in the event said posttrial motions were denied, Petitioner could proceed through the normal appellate process.

Three dissenting Justices of the Illinois Supreme Court disagreed with the majority's decision to refrain from affording Mr. Edwards relief. After exploring the merits of Mr.

Edwards' Petition, the dissenting Justices observed that Mr. Edwards had been prosecuted for and convicted of a non-existent regulatory offense.

Mr. Edwards then filed a motion for supervisory order contending that imposing sentence for a violation of a non-existent regulatory offense violated principals of due process and, for all intents and purposes, federal criminal law. The motion for supervisory order was denied by a four-Justice majority of the Illinois Supreme Court.

REASONS THE PETITION SHOULD BE GRANTED

I. The Decision Below Violates Petitioner's Due Process Rights Because it Fails to Address Whether Jurisdiction Existed, Thereby Forcing Defendant to Risk Conviction and Sentence, and Appeal, in Order to Establish That Jurisdiction Never Existed.

"To punish a person criminally for an act that is not a crime would seem the quintessence of denying due process of law . . . ." *Johnson v. United States*, 805 F.2d 1284, 1288 (7th Cir. 1986). "To give a court jurisdiction in a criminal case, it is essential that the indictment or information charge the accused with a crime." *People v. Edge*, 406 Ill. 490, 493, 94 N.E.2d 359, 361 (1950). "[B]efore a conviction may be sustained, there must be an indictment or information which charges a crime. This is jurisdictional . . . ." *People v. Harris*, 394 Ill. 325, 327, 68 N.E.2d 728, 729 (1946).

This case is an experiment by the Illinois Department of Natural Resources ("IDNR") and Respondent Ramon Escapa, the Schuyler County State's Attorney. In the history of United States and Illinois criminal law, to the undersigned's knowledge, there has never been any reported decision allowing a jury verdict, criminal finding of guilt, or sentence based solely upon an alleged violation of an

administrative rule. Yet, here, the IDNR and State's Attorney seek to establish authority to do just that: to begin applying the penal force of criminal law to mere administrative regulations, without invoking or charging any statutory or constitutional authorization for doing so.

Historically, criminal law has permitted some references to administrative facts or rules as results or attendant circumstances, but in each such instance, there is a statute that is alleged to be violated, not just an allegedly-criminal violation of an administrative regulation or a rules-enabling statute.

For example, in *People v. Gurell*, 98 Ill.2d 194 (1983), the statute provided that no person shall "[i]ntentionally fail to correct or interfere with the correction of [certain plans established pursuant to administrative rules]." *Id*. at 200-201. The defendants were charged with violating the statute, stemming from violations of regulations. *Id*. at 199, 202. The Illinois Supreme Court found that the alleged conduct not only violated a regulation, but also a statute: "Civil penalties may be imposed for the original violation. [Citations omitted.] However, criminal penalties are not imposed for the original violation." *Id*. at 208.

Similarly, in *People v. Fearon*, 85 Ill. App. 3d 1087, 1088 (1st Dist. 1980), a defendant was charged with violating Section 5 of the Illinois Bingo License and Tax Act, which provided that any person who "willfully violates any rule or regulation of the Department is guilty of a misdemeanor." Again, a violation of a statute was alleged; the crime was a violation of a statute, not a violation of a rule, even though a regulation was involved.

There are many other examples of criminal statutes based in whole or in part on administrative rules. For instance, there is a statute which prohibits the conduct of driving a motor vehicle coupled with the attendant circumstance of a license that has been administratively revoked. See, e.g., 625 ILCS 5/6-303. Another example would be

prosecutions under the official misconduct statute (720 ILCS 5/33-3(a)), which are brought as violations of the statute, but which can involve proof of a violation of a rule or regulation, if the rule or regulation may be said to be a "law." *People v. Williams*, 239 Ill.2d 119 (2010).

In these cases, a criminal statute is charged, and such statute prescribes the prohibited conduct and any attendant circumstances that are part of the prosecution's burden of proof. In these cases, in Illinois and sister states, a defendant does not face prosecution for violating a rule; rather, a defendant faces criminal prosecution because he or she allegedly violated a statute. *State v. Chvala*, 271 Wis.2d 115, 148-149 (2004). As succinctly noted by the Supreme Court of Indiana in *Tiplick v. State of Indiana*, 43 N.E.3d 1259, 1269 (2015), "disobedience [is] in violation of the statute, and not a rule of the ministerial board." In contrast, this case does not charge a criminal statute; it charges a regulation. The United States Supreme Court should put an end to this experiment.

The norm is (and always has been) that Circuit Courts have jurisdiction over justiciable matters involving alleged crimes based on conduct described in a "statute". See IL Const. of 1970, Art. VI, § 9 (conferring jurisdiction to Circuit Courts only as to "all justiciable matters"). Without a statute, there can be no crime. Without a statute, there can be no justiciability.

II. The Criminal Code does not permit criminal charges based upon regulations alone.

Section 1-3 of the Illinois Criminal Code provides that "[n]o conduct constitutes an offense unless it is described as an offense <u>in this Code or in another statute</u> of this State." 720 ILCS 5/1-3. (Emphasis added). Similarly, Section 2-12 defines an "offense" as a "violation of any penal

statute." 720 ILCS 5/2-12 (emphasis added); see also 725 ILCS 5/102-15.

The term "statute" is also defined. It means "the Constitution or an Act of the General Assembly of this State." 720 ILCS 5/2-22. An administrative rule, of course, is neither the Constitution nor an Act of the General Assembly. Rather, it is a regulatory creature of the executive branch. Thus, a regulation alone does not invoke the provisions of the Illinois Criminal Code (or the constitutional requirement of justiciability). In other words, there can be no subject-matter jurisdiction over an alleged criminal proceeding charging solely a regulatory violation, inasmuch as this does not fit within the definition of an "offense" set forth in the Criminal Code. Nor does it otherwise constitute a justiciable matter under the Illinois Constitution, as further discussed below.

Notably, Section 1-5 of the Criminal Code, which is entitled "State criminal jurisdiction," limits the trial court's subject-matter jurisdiction in criminal cases to matters involving an "offense." 720 ILCS 5/1-5. In other words, an administrative regulation cannot create an offense, and without an offense, there can be no criminal jurisdiction.

III. The only statute cited by the State in the relevant charges—Section 10 of the Illinois Timber Buyers Licensing Act—is not a penal statute.

Here, in the Amended Information, the State cited one statute: Section 10 of the Timber Buyers Licensing Act. See 225 ILCS 735/10. However, this does not invoke jurisdiction or justiciability according to the Illinois Constitution, the Illinois Criminal Code, or the Code of Criminal Procedure. This is because the statute does not describe a crime; it is not penal in nature.

Section 10 states in its laconic entirety that "[t]he Department may make such rules and regulations as may be necessary to carry out the provisions of this Act." 225 ILCS 735/10. This statute does not fit within the definition of an "offense" and certainly does not, in any event, apply to private, non-IDNR persons such as Mr. Edwards who are not capable of violating Section 10 by, for example, not making rules and regulations. Rather, this statute merely allows the IDNR to make rules and regulations. Nor is it penal. Rather, it is a rules-enabling statute which purports to authorize rulemaking by the IDNR. By its terms, Section 10 confers power on an agency to make rules, not power on an individual citizen or a court or a State's Attorney. Thus, Section 10, as pled in the Amended Information, cannot be viewed as describing conduct which constitutes an offense within the meaning of 720 ILCS 5/1-3, 720 ILCS 5/2-22, 720 ILCS 5/2-12, or 725 ILCS 5/102-15. In fact, Section 10 of the Illinois Timber Buyers Licensing Act is not even on the Criminal Offenses Table of the Administrative Office of Illinois Courts ("AOIC").

IV. The Two Regulations Cited In The Relevant Charges Do Not Describe An "Offense."

Each of the two administrative rules referenced in the Amended Information are codified in Title 17, Part 1535, of the Illinois Administrative Code. One such rule is 17 Ill. Adm. Code 1535.1(b). This rule describes itself as creating a provision, non-compliance with which constitutes "buying timber without a timber buyer's license." Section 1535.1(b) only on the surface resembles what is provided in a non-pleaded statute, namely, Section 3 of the Timber Buyers Licensing Act (225 ILCS 735/3), which requires a person to obtain a license before engaging in the business of timber buyer. (Section 3 does not address the topic of agents or listed persons, such as Mr. Edwards.) A

violation of Section 3 is a Class A misdemeanor pursuant to Section 11(a-5) (225 ILCS 735/11(a-5)). Section 3 appears to require licensure, as it governs those who should be licensed, while Section 1535.1(b) is geared more towards whom a licensee may list as agents (who are not themselves licensed). Here, as alleged in all versions of the Information filed in the Circuit Court, Mr. Edwards was a listed agent for a timber buyer, not himself a licensee, at all relevant times.

V. A Purported Penalty Provision Adopted By The Illinois Department of Natural Resources in the Illinois Administrative Code Does Not Obviate The Criminal Code, Code of Criminal Procedure, and Illinois Constitution.

The second administrative rule alleged in the Amended Information is 17 Ill. Adm. Code 1535.60(a), which provides as follows:

> Any person violating the provisions of this Part shall, upon finding of guilt by a court of law, be Subject to statutory penalties as prescribed by the Timber Buyers Licensing Act [225 ILCS] and to revocation of license and suspension of privileges, as set out in the Timber Buyers Licensing Act.

The above-quoted language references a person violating "the provisions of this Part." In this context, the term "Part" refers to Part 1535 of Title 17. The "Part" is not a statute; it is a grouping of rules or regulations in the Illinois Administrative Code. The above-quoted language from Section 1535.60(a) presupposes that a Circuit Court could enter a "finding of

guilt" for a violation of the provisions of Part 1535. The notion, in this regulation, that a Circuit Court could enter a "finding of guilt" for an alleged violation of an administrative rule, is problematic for several reasons. First, a violation of the provisions of Part 1535 would not constitute an "offense" under 720 ILCS 5/1-3, 720 ILCS 5/2-12, 720 ILCS 5/2-22, or 725 ILCS 5/102-15, because Part 1535 is not a "statute." Second, the IDNR has no authority to confer jurisdiction on a Circuit Court. Third, the role of Circuit Courts is defined in Article VI, Section 9 of the Illinois Constitution as follows:

> SECTION 9. CIRCUIT COURTS-JURISDICTION
>
> Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

The Constitution provides for Circuit Courts to "review administrative action as provided by law." The Constitution does not provide original jurisdiction to adjudicate alleged violations of administrative rules as crimes.

In short, Section 1535.60(a) cannot confer jurisdiction on a Circuit Court to enter findings of guilt for alleged violations of the IDNR's rules in Part 1535. In Section 1535.60 (a), the Department cannot create a crime out of every administrative rule in Part 1535, because Part 1535

is not a "statute." Although prosecutions of statutory crimes are "justiciable matters," administrative rule violations as non-crimes are not "justiciable matters" for exercising the original jurisdiction of a Circuit Court in a criminal case, even if the Constitution grants to Circuit Courts the power to "review" administrative actions as provided by law.

Here, the point is, this purported criminal case is based upon two administrative rules (§§ 1535.1(b) and 1535.60 (a)) and one rules-enabling statute (225 ILCS 735/10), none of which constitutes a penal statute. This is why the Illinois Supreme Court should have issued a supervisory order, to put an end to this experimental prosecution, because a criminal prosecution of allegedly violating an administrative rule is both peculiar and wrong. Due to the novelty and importance of this experimental prosecution, it is hereby suggested that this Court request oral argument.

In the instant case, if the prosecutorial experiment is allowed to proceed based solely on alleged violations of an administrative rule, the criminal justice system will be extended well beyond its intended ambit. State agencies will pester prosecutors to charge violations of their administrative rules rather than charging violations of statutes. Non-justiciable matters will occupy the courts' scarce resources, when those resources should be devoted to justiciable matters. One can only imagine the Administrative Office of Illinois Courts needing to expand its "Criminal Offenses Table" to incorporate a multitude of regulations contained in the Illinois Administrative Code. Plus, there would presumably be a need either to (1) as here, craft non-pattern instructions or (2) task a committee to prepare pattern instructions for a multitude of regulations, for use in criminal cases. There is good cause for this Court to rule that without a criminal statute being pled in an

Information or Indictment, jurisdiction in a criminal case is lacking.[2]

The Circuit Court has no "justiciable matter" before it and as such lacks subject-matter jurisdiction; all previous orders entered by the Circuit Court, after an Amended Information was filed alleging only administrative rules, were in excess of its jurisdictional and inherent authority. The Illinois Supreme Court has held that:

> There can be no doubt that jurisdiction is lacking where the circumstances alleged do not constitute the offense charges as it is defined in the statute and nothing short of alleging entirely different facts could cure the defect.***A conviction entered in such a case exceeds the statutory and constitutional authority which determine the subject matter jurisdiction of a court in a criminal case.

People v. McCarty, 94 Ill. 2d 28, 38 (1983); see also People v. Devine, 295 Ill. App. 3d 537, 543 (1st Dist. 1998)("To vest a court with jurisdiction in a criminal case, the information must charge the accused with a crime.")[3] Lastly, the circuit court is without jurisdiction to enter a conviction against a

---

[2] Mr. Edwards' counsel has researched authority concerning 725 ILCS 5/111-3(a)(2) and was unable to locate any authority concerning jurisdiction and the State's failure to cite a statutory provision in an information or indictment. However, Ill. Const. 1970, art. VI, sec. 9 refers to all "justiciable matters," and 725 ILCS 5/111-3 provides that a person may be subject to prosecution in this State for an "offense." As noted earlier, "offense" means a violation of any penal statute of this State" 720 ILCS 5/2-12. No statute, no offense. No offense, no jurisdiction.

[3] This authority was cited to the circuit court in Mr. Edwards' Memorandum in Support of Motion to Dismiss, filed on June 28, 2016.

defendant based upon actions that do not constitute a criminal offense. *People v. Kayer*, 2013 IL App (4th) 120028, ¶.

The Illinois Supreme Court addressed the implications of the constitutional requirement of a "justiciable matter" in *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325 (2002), as follows:

> Our current constitution does not define the term "justiciable matters," nor did our former constitution, in which this term first appeared. Generally speaking, a "justiciable matter" is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon legal relations of parties having adverse legal interests.

Id. At 335 (internal citations omitted). The term "justiciable" has been defined as "(of a case or paper) brought before a court of justice; capable of being disposed of judicially." Blacks Law Dict. 9th Ed. The circuit court's authority to adjudicate a justiciable matter derives exclusively from the state constitution. *In re Luis R.*, 239 Ill. 2d 295, 304 (2010).

In *In re Luis R.*, the Illinois Supreme Court determined the issue of jurisdiction by looking to "whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine." *Id*. At 301. Under Article VI, Section 9 of the Illinois Constitution, administrative actions are matters for review by circuit courts, not adjudication by circuit courts, in the original instance. Thus, adjudication of administrative actions alone is not within the class of cases that are justiciable. The circuit courts have jurisdiction in all cases involving criminal

offenses which fall within the ambit of Section 1-5 of the Criminal Code. *People v. Gilmore*, 63 Ill. 2d 23, 26-27 (1976). However, "[t]he trial court is not authorized to convict a person who has not been charged with a violation of the criminal law." *People v. Greene*, 92 Ill. App. 2d 201, 204 (1st Dist. 1968) (emphasis added), citing *People v. Minto*, 318 Ill. 293 (1925). In the absence of an accusation charging a defendant with a violation of the criminal law, a charge is void on its face, the trial court has no jurisdiction or authority to convict, and the defendant cannot by waiver or consent confer such jurisdiction or authority. *People v. Fore*, 384 Ill. 455, 458 (1943); *Minto*, 318 Ill. At 295-297. As such, it does not confer jurisdiction upon a court. *People ex rel. Kelley v. Frye*, 41 Ill. 2d 287, 290 (1968) (writ of *habeas corpus* denied because indictment was not void due to lack of signature by grand-jury foreperson, such that there was subject-matter jurisdiction).

VI. Even If A Regulation Can Serve As The Criminal Law Pled In An Information, Section 1535.1(b) Is Not A Criminal Regulation.

Even assuming solely for the sake of argument that a provision of an administrative rule (not a statue) could be pled as the criminal law upon which a prosecution in Illinois is based, Section 1535.1 could not be considered to be a criminal law.

Section 1535.1 was not adopted to be a criminal provision. In *United States v. Izurieta,* 710 F.3d 1176 (11th Cir. 2013), the court predicated its ruling to vacate the criminal conviction of a food importer based on an examination of the true nature of the regulation in question and opted for lenity. This is especially appropriate in cases where, as here, "a regulation giving rise to what would appear to be civil remedies is said to be converted into a criminal law." *See id.* at 1182. In vacating the defendant's criminal

conviction in *Izurieta,* the court held that the text of the regulation at issue was civil in nature, setting forth contractual terms between an importer and U.S. Customs. *Id.* at 1184. The *Izurieta* court, therefore, evaluated the true nature of the regulation in question and opted for lenity where, as here, ''a regulation giving rise to what would appear to be civil remedies is said to be converted into a criminal law." *Id.* at 1181-82. The *Izurieta* court found a lack of subject-matter jurisdiction before the trial court in that case because "the indictment did not adequately set forth a violation of criminal law, and subject matter jurisdiction does not exist." *Id.* at 1185.

Here, to determine the true nature of the regulation in question, this Court can examine the regulatory history leading up to what the IDNR added as 17 Ill. Adm. Code 1535.1 *et seq.* in a ''New Section" on May 26, 1992. Specifically, the IDNR published in the Illinois Register at 92 Ill. Reg. 8499-8502 the “Summary and Purpose" of the regulation i.e., the Agency's administrative purpose of 17 Ill. Admin. Code 1535.1. In this publication, the IDNR stated: "Section 1535.1 is being added to outline the Timber Buyer's License application procedures" (emphasis added). Notably, there is no statement of intent to create a crime or to otherwise apply the regulation to agents of licensed timber buyers, rather than only apply to licensed timber buyers and timber buyer license applicants themselves.

Courts in other jurisdictions have found that only statutes—not merely regulations—provided what is a crime including the elements thereof. *See, e.g., Chvala,* 271 Wis. 2d at 148, 149; *Tiplick,* 43 N.E. 3d at 1269 (2015); *United States v. Alghazouli,* 517 F.3d 1179, 1187-88 (9th Cir. 2008) (finding a statute is required in order to criminalize a violation of a regulation); *United States v. Eaton,* 144 U.S. 677, 687-88 (1892) (holding that regulatory requirement imposed by Commissioner of Internal Revenue could not form the basis of a crime under a statute penalizing failure

to do a thing "required by law"). In other words, here, 17 Ill. Adm. Code 1535.1 is not, and was not intended to be, a criminal rule. It cannot form the basis of a criminal prosecution.

Here, the State lacked the ability to prosecute an unknown or unrecognizable criminal offense of ''Unlawfully Acting As A Timber Buying Agent For Multiple Licensed Timber Buyer." Evidence of this fact is the State's inability to cite a criminal statute that Mr. Edwards purportedly violated. Therefore, the circuit court lacks the ability to enter any valid disposition or other order when no statute proscribed the alleged criminal offenses charged by the State.

Nullum crimen sine lege ("no crime without law") is a principle in criminal law that a person cannot and should not face criminal punishment except for an act that was criminalized by law before he or she performed the act.

Here, Defendant's convictions are based solely on 17 Ill. Adm. Rule 1535.l(b), which is civil in nature and not criminal in nature. Because the State has presented a charge to the circuit court that is fatally defective on its face for failure to cite any criminal statutory provision that Mr. Edwards purportedly violated (and for not adhering to strict compliance in charging a criminal offense as required in, e.g., 725 ILCS 5/111-3), the circuit court did not and does not have subject-matter jurisdiction. Accordingly, the Illinois Supreme Court should have granted Petitioner’s motion for supervisory order.

CONCLUSION

The Court should grant the petition for a writ of certiorari and schedule this case for briefing and oral argument.

Respectfully submitted.

ROBERT J. HANAUER
Counsel of Record
PATRICK T. SHEETS
456 Fulton Street, Suite 200
Peoria, IL 61602
(309) 966-4423
rob@hanauerlaw.com

JANUARY 29, 2020

APPENDIX

Supreme Court of Illinois

KENIN L. EDWARDS, Movant,

v. (Case No. 125337)

HONORABLE MICHAEL L. ATTERBERRY *et al.,* Respondents.

Filed October 31, 2019.

JUSTICE KILBRIDE, dissenting from denial of motion for a supervisory order:

¶1 In accordance with my dissent in *Edwards v. Atterberry,* 2019 IL 123370, I dissent from the court's denial of the instant motion. I continue to believe that Edwards is entitled to supervisory relief from this court directing the circuit court to vacate his criminal convictions of a nonexistent regulatory offense.

¶2 CHIEF JUSTICE BURKE and JUSTICE NEVILLE join in this dissent.

Supreme Court of Illinois

KENIN L. EDWARDS, Movant,

v. (Case No. 125337)

HONORABLE MICHAEL L. ATTERBERRY *et al.,* Respondents.

Filed October 31, 2019.

Motion by Movant for a supervisory order. Denied. Dissent attached. Order entered by the Court.

Supreme Court of Illinois

KENIN L. EDWARDS, Petitioner,

v. (Case No. 123370)

HONORABLE MICHAEL L. ATTERBERRY, in his official Capacity as Circuit Judge, Respondent.

Opinion filed February 22, 2019.
Rehearing denied May 20, 2019.

Attorneys and Law Firms

Robert J. Hanauer, of Hanauer Law Office, LLC, of Peoria, for petitioner.

Lisa Madigan, Attorney General, of Springfield (David L. Franklin, Solicitor General, and Michael M. Glick, Daniel B. Lewin, and Joshua M. Schneider, Assistant Attorneys General, of Chicago, of counsel), for respondents.

OPINION

JUSTICE GARMAN delivered the judgment of the court, with opinion.

¶ 1 This is an original action for a writ of prohibition. Petitioner Kenin L. Edwards asks this court to issue an order to prohibit respondent Judge Michael L. Atterberry from

conducting a sentencing hearing or any other action in the underlying criminal case.

¶ 2 BACKGROUND

¶ 3 Edwards was charged by information with two violations of the Timber Buyers Licensing Act (225 ILCS 735/1 et seq. (West 2016)). The information referred to each of these violations as constituting a Class A misdemeanor, which Edwards disputes. Edwards filed several pretrial motions, including motions to dismiss that, relevant here, contested the circuit court's subject-matter jurisdiction. The State was twice allowed to amend the information. The pertinent version of the information set forth the following counts. Count I charged Edwards with

> the offense of UNLAWFULLY ACTING AS A TIMBER BUYING AGENT FOR MULTIPLE LICENSED TIMBER BUYERS, in violation of SECTION 10 of ACT 735 of CHAPTER 225 of the Illinois Compiled Statutes of said State and Administrative Rule SECTION 1535.1(b) of PART 1535 of SUB-CHAPTER d of CHPATER [sic] I of TITLE 17, pursuant to SECTION 1535.60(a) of PART 1535 of SUB-CHAPTER d of CHAPTER I of TITLE 17, in that the said defendant knowingly[1] acted as an authorized agent for multiple licensed timber buyers, being listed as an agent for timber buyer Trent Copelen and acted as agent for timber buyer Jonathan Luckett and represented himself as a

[1] The word "knowingly" was added by a handwritten addition in the right margin, dated "7-31-17" and initialed by State's Attorney Ramon M. Escapa.

> timber buyer when attempting to enter into an agreement with Donald Cook.
>
> Class A Misdemeanor

Count II charged Edwards with:

> the offense of UNLAWFULLY ACTING AS A TIMBER BUYING AGENT FOR MULTIPLE LICENSED TIMBER BUYERS, in violation of SECTION 10 of ACT 735 of CHAPTER 225 of the Illinois Compiled Statutes of said State and Administrative Rule SECTION 1535.1(b) of PART 1535 of SUB-CHAPTER d of CHPATER[sic] I of TITLE 17, pursuant to SECTION 1535.60(a) of PART 1535 of SUB-CHAPTER d of CHAPTER I of TITLE 17, in that the said defendant knowingly[2] acted as an authorized agent for multiple licensed timber buyers, being listed as an agent for timber buyer Trent Copelen and acted as an agent for timber buyer Jonathan Luckett in selling timber to Leroy Yoder of Plainview Pallet, Tom Farris of Farris Forest Products, John Peters of River City Hardwood, Inc., Norman Hochstetler of Oak Ridge Lumber, LLC, and Michael Eichen of Eichen Lumber Company, Inc.

---

[2] As with count I, "knowingly" was added by hand, dated "7-31-17," and initialed by State's Attorney Ramon M. Escapa.

Class A Misdemeanor

A jury found Edwards guilty of both counts.

¶ 4 Thereafter, Edwards filed a motion for a supervisory order and for leave to file a complaint for a writ of prohibition. See Ill. S. Ct. Rs. 383, 381 (eff. July 1, 2017). This court denied the motion for a supervisory order but allowed Edwards leave to file a complaint for a writ of prohibition. Pending disposition of the complaint, this court stayed the circuit court case.

¶ 5 ANALYSIS

¶ 6 Edwards seeks to prohibit respondent, Judge Michael L. Atterberry, from conducting a sentencing hearing or from taking any other action in the underlying criminal case.[3] Edwards claims that, because the information charged him with violating regulations and not a statute defining a criminal offense, the circuit court lacked subject-matter jurisdiction. Thus, Edwards frames the issue as whether there is subject-matter jurisdiction in a case alleging a regulatory violation as a crime. We begin by setting forth the pertinent law and requirements relating to a writ of prohibition.

¶ 7 Pursuant to article VI, section 4(a), of the Illinois Constitution of 1970, this court may exercise original jurisdiction in cases relating to prohibition. Ill. Const. 1970, art. VI,

[3] Judge Scott J. Butler is also named as a respondent. He apparently handled pretrial motions before the case was transferred to Judge Atterberry. Edwards does not specify what exactly he seeks to prohibit Judge Butler from doing. Because respondents' brief was filed in both names, we will refer to respondents rather than respondent.

§ 4(a); *People ex rel. Foreman v. Nash*, 118 Ill. 2d 90, 96, 112 Ill.Dec. 714, 514 N.E.2d 180 (1987). A writ of prohibition is an extraordinary remedy. *Nash*, 118 Ill. 2d at 96, 112 Ill.Dec. 714, 514 N.E.2d 180. "A writ of prohibition lies to prevent a judge from acting where he has no jurisdiction to act or to prevent a judicial act which is beyond the scope of a judge's legitimate jurisdictional authority." *Daley v. Hett*, 113 Ill. 2d 75, 80, 99 Ill.Dec. 132, 495 N.E.2d 513 (1986).

¶ 8 A writ of prohibition will not issue unless four requirements are met. *Zaabel v. Konetski*, 209 Ill. 2d 127, 131-32, 282 Ill.Dec. 748, 807 N.E.2d 372 (2004). First, the action to be prohibited must be of a judicial or quasi-judicial nature. *Id*. at 132, 282 Ill.Dec. 748, 807 N.E.2d 372. Second, the writ must be directed against a tribunal of inferior jurisdiction. *Id*. Third, "the action to be prohibited must be outside the tribunal's jurisdiction or, if within its jurisdiction, beyond its legitimate authority." *Id*. Fourth, there must not be any other adequate remedy available to the petitioner. *Id*. But see *Nash*, 118 Ill. 2d at 97, 112 Ill.Dec. 714, 514 N.E.2d 180 (where the issue presented is sufficiently important to the administration of justice, this court may issue a writ of prohibition even if all of the aforementioned requirements are not met).

¶ 9 The first and second requirements are not disputed. The parties do contest the third and fourth requirements. However, we need only address the fourth requirement, given the circumstances of this case. See *Nash*, 118 Ill. 2d at 95, 112 Ill.Dec. 714, 514 N.E.2d 180 (first examining whether writs of *mandamus* or prohibition or supervisory orders would constitute appropriate remedies in that case).

¶10 As noted, the fourth requirement needed for a writ of prohibition is that there must not be any other adequate

remedy available to the petitioner. *Zaabel*, 209 Ill. 2d at 132, 282 Ill.Dec. 748, 807 N.E.2d 372. Respondents point out that Edwards filed a timely posttrial motion. Specifically, Edwards filed a combined motion for entry of a judgment notwithstanding the verdict, a motion for a new trial, and a motion in arrest of judgment, pursuant to sections 116-1 and 116-2 of the Code of Criminal Procedure of 1963. 725 ILCS 5/116-1, 116-2 (West 2016). However, before the circuit court could rule on that motion, Edwards filed a motion seeking both a supervisory order and leave to file a complaint for prohibition in this court. We allowed the motion in part. Specifically, this court denied Edwards's motion for a supervisory order but allowed him leave to file the complaint for a writ of prohibition. This court stayed circuit court proceedings pending disposition of the prohibition action. We now turn to the parties' arguments relating to the fourth requirement for a writ of prohibition.

¶ 11 Edwards argues that no other adequate remedy exists and that the case could be resolved simply and expeditiously on jurisdictional grounds via a writ of prohibition. Edwards suggests that it would be futile to await the circuit court's disposition of his posttrial motion because respondents previously ruled that the circuit court had jurisdiction and, over Edwards's objection, proceeded to trial. Edwards notes that he could be sentenced to jail. He adds that suspension or revocation of a timber buyer's license may occur upon a finding of guilt by a court of law for a violation of part 1535 of Title 17, Timber Buyer Licensing and Harvest Fees. 17 Ill. Adm. Code 1535.60 (2003). Edwards represents that the Department of Natural Resources has already initiated proceedings against his license based upon the jury verdict below. He argues that *Zaabel* demonstrates that he "would be irremediably harmed if he were required to press his claim that the

circuit court lacks subject matter jurisdiction within the normal appellate process." 209 Ill. 2d at 132, 282 Ill.Dec. 748, 807 N.E.2d 372.

¶ 12 Respondents maintain that Edwards could obtain relief on his posttrial motion or otherwise on appeal. As to Edwards's asserted reasons for why the normal appellate process is inadequate, respondents note that potentially facing the collateral consequences of a conviction pending appeal is true of every criminal case. Additionally, respondents comment that Edwards does not explain why the potential loss of his license recommends resolving his claims here instead of in the appellate court. Respondents observe that Edwards might receive probation. See 730 ILCS 5/5-4.5-55(d) (West 2016) (probation may be imposed for Class A misdemeanors). However, if Edwards is sentenced to imprisonment, respondents note that, pursuant to Illinois Supreme Court Rule 609 (eff. Feb. 6, 2013), Edwards may seek a stay of his sentence on appeal. With these arguments in mind, we next briefly discuss a case that reached this court under somewhat similar circumstances.

¶ 13 In *Moore v. Strayhorn*, 114 Ill. 2d 538, 540, 104 Ill.Dec. 230, 502 N.E.2d 727 (1986), this court granted the petitioner, Moore, leave to file a complaint for an original writ of *mandamus* or prohibition or supervisory order to direct the circuit judge to vacate the portion of the sentence that denied him credit for time served. This court concluded that

"leave to file that petition was improvidently granted because Moore should have been left to his alternative remedy of appealing the sentencing order to our appellate court. Applications to this court for original actions of mandamus and prohibition or for supervisory orders

should not be allowed as a way of circumventing the normal appellate process." *Id*.

Nonetheless, this court elected to exercise its discretionary supervisory authority to resolve the matter in light of judicial economy and because Moore's time to appeal had already expired. *Id*.

¶ 14 As in *Moore*, we determine that Edwards should have been left to his alternative remedy—the normal appellate process. We reject Edwards's argument that he lacks any other adequate remedy. Indeed, Edwards has a posttrial motion pending in the circuit court. Even if that motion is unsuccessful, Edwards could obtain relief on appeal to the appellate court. Beyond that, Edwards could petition for leave to appeal to this court. Ill. S. Ct. R. 315 (eff. July 1, 2018). Critically, and unlike in *Moore*, Edwards's time to appeal has not expired. Quite simply, the entire extent of the normal appellate process is yet available to Edwards should the trial court deny his posttrial motion.

¶ 15 Edwards criticizes the nature of respondents' "what if?" arguments. As an example, respondents contend that Edwards may receive probation instead of being imprisoned. However, the fact remains that these uncertainties exist because Edwards did not await disposition of his posttrial motion or sentencing prior to his seeking prohibition in this court. We resolutely disapprove of Edwards's argument that the case could be resolved simply and expeditiously on jurisdictional grounds. Because one route may be most expeditious does not render an alternative route inadequate, particularly in the context of an original action for a writ of prohibition. Original actions of prohibition may not be used to circumvent the normal appellate process. *Nash*, 118 Ill. 2d at 97, 112 Ill.Dec. 714, 514 N.E.2d 180. A writ of prohibition is "normally to be awarded only

in *rare* instances where none of the ordinary remedies is available or adequate." (Emphasis added.) *Hughes v. Kiley*, 67 Ill. 2d 261, 266, 10 Ill.Dec. 247, 367 N.E.2d 700 (1977).

¶ 16 Next, Edwards maintains that, even if he were to utilize the ordinary appellate process and eventually prevail, he would still sustain irremediable harm because a stay under Illinois Supreme Court Rule 609 (eff. Feb. 6, 2013) would not apply to the license revocation proceedings. Edwards contends that his business will falter and his livelihood will be jeopardized if he is jailed or has his license revoked.

¶ 17 To show that being sentenced to jail does not constitute irremediable harm, respondents cite *Hughes*, arguing that prohibition was denied to criminal defendants who were not yet convicted because they could await conviction and appeal. 67 Ill. 2d at 267-68, 10 Ill.Dec. 247, 367 N.E.2d 700. Edwards asserts that *Hughes* is inapposite because it concerns a petition for a writ of *habeas corpus* alleging a due process violation stemming from the way that a prosecutor allegedly spoke to a grand jury. *Id*. at 265-66, 10 Ill.Dec. 247, 367 N.E.2d 700. Rather, *Hughes* involved three defendant-petitioners. *Id*. at 264-65, 10 Ill.Dec. 247, 367 N.E.2d 700. Two of the defendant-petitioners petitioned this court for writs of prohibition seeking to prevent further proceedings in their cases after the trial judge denied their motions to quash their indictments. *Id*. Defendant-petitioners had argued that their due process rights had been violated by an assistant state's attorney's conduct before the grand jury. The third defendant-petitioner, who was charged in a different case, filed a petition for writ of *habeas corpus* seeking his discharge and release after the trial judge denied his motion to quash the indictment. *Id*. at 265, 10 Ill.Dec. 247, 367 N.E.2d 700. All three defendant-petitioners argued that they were entitled to the

extraordinary relief of prohibition or *habeas corpus* because no other remedy existed that did not require them to suffer extreme hardship prior to its availability. *Id*. at 266, 10 Ill.Dec. 247, 367 N.E.2d 700.

¶ 18 This court denied the petitions for a writ of prohibition and quashed the writ of *habeas corpus*. *Id*. at 268, 10 Ill.Dec. 247, 367 N.E.2d 700. As to the writs of prohibition, the court noted that prohibition was not an appropriate remedy because no question of jurisdiction was at issue. *Id*. at 267-68, 10 Ill.Dec. 247, 367 N.E.2d 700. However, the court commented that the trial judge's rulings on the motions to quash the indictments were still subject to direct review upon conviction. *Id*. at 268, 10 Ill.Dec. 247, 367 N.E.2d 700. As to the writ of *habeas corpus*, this court also commented that the defendant-petitioner's remedy was instead by means of direct review. *Id*. Thus, Edwards's attempt to distinguish *Hughes* fails.

¶ 19 As to Edwards's argument that his business and livelihood will be harmed due to the loss of his timber buyer's license and delay occasioned by the appellate process, this argument also falls short. Respondents rightly note that Edwards is essentially complaining of collateral consequences that may occur pending an appeal. See *People v. Delvillar*, 235 Ill. 2d 507, 520, 337 Ill.Dec. 207, 922 N.E.2d 330 (2009) ("[c]ollateral consequences * * * are effects upon the defendant that the circuit court has no authority to impose" and that "result[ ] from an action that may or may not be taken by an agency that the trial court does not control"). Were we to consider such consequences indicative of irremediable harm, then the normal appellate process would nearly always prove inadequate.

¶ 20 Here, the trial court did not order that Edwards's license be revoked. Instead, the finding of guilt triggered the

collateral consequence of the Department of Natural Resources taking steps to revoke his license. Of note, Edwards offers only a vague portrayal of the situation surrounding his timber buyer's license. In Edwards's brief, he represents that he has a timber buyer's license. Respondents' brief notes that, "[t]hough not of record here, petitioner appears to have obtained a license after the transactions below." In reply, Edwards states that "[r]espondents properly recognize that petitioner obtained a timber buyer's license after the alleged transactions at issue in the Schuyler County case." Then, Edwards declares that the Department of Natural Resources has already initiated and continued to pursue proceedings against his license. Finally, at oral argument, counsel suggested that this court take judicial notice "that the IDNR after this court stayed proceedings in Schuyler County attempted and did for a period of 92 days suspend Mr. Edwards's since acquired Timber Buyer's license."

¶ 21 Putting aside the fact that the license revocation proceeding is an entirely separate matter, Edwards also has not provided any documentation relating to his licensure or the license revocation proceedings. This court is left to guess when exactly Edwards obtained a license; if the Department of Natural Resources had other bases for seeking suspension or revocation of his license; what effect, if any, an award of prohibition would have upon the agency proceeding; whether Edwards's license is at present suspended, revoked, reinstated; and the precise status of the suspension/revocation proceeding. In this circumstance, without more, Edwards has not demonstrated irremediable harm so as to warrant excusal from the normal appellate process. See *Zaabel*, 209 Ill. 2d at 132, 282 Ill.Dec. 748, 807 N.E.2d 372 (petitioner has the burden to show that he

would be irremediably harmed).

¶ 22 Still, even if no irremediable harm is apparent, Edwards urges this court to exercise its discretion and consider this action. See *id*. (although petitioner did not demonstrate that the normal appellate process would not provide an adequate remedy, court chose to address the merits of petitioner's complaint for prohibition because issue was important to the administration of justice); *Orenic v. Illinois State Labor Relations Board*, 127 Ill. 2d 453, 468, 130 Ill.Dec. 455, 537 N.E.2d 784 (1989) ("Though *mandamus* is extraordinary, we may consider a petition for the writ when it presents an issue that is novel and of crucial importance to the administration of justice, even if all the normal requirements for the writ's award are not met initially."); *Moore*, 114 Ill. 2d at 540, 104 Ill.Dec. 230, 502 N.E.2d 727 (despite finding the normal appellate process to be adequate, court exercised its discretion and addressed the merits of Moore's arguments).

¶ 23 In *People ex rel. Foreman v. Nash*, this court began its analysis by considering whether writs of *mandamus* or prohibition or supervisory orders would be proper remedies in that case. 118 Ill. 2d at 95, 112 Ill.Dec. 714, 514 N.E.2d 180. The court concluded that *Moore* was controlling and noted that the State had already presented arguments on direct appeal to the appellate court, on petition for rehearing, and to this court via a petition for leave to appeal. *Id*. at 98, 112 Ill.Dec. 714, 514 N.E.2d 180. This court explained that "[a]n extraordinary remedy such as a writ of *mandamus* or a writ of prohibition should not be used as a substitute for another appeal." *Id*. The court did not consider the questions presented therein to be of such importance to the administration of justice to require this court's exercise of its supervisory authority. *Id*. Thus, the court concluded that the State's motion was improvidently

granted and did not reach the merits of the parties' arguments. *Id*.

¶ 24 Similarly, we see no reason to look past Edwards's failure to show that he lacks any other adequate remedy and nevertheless address the merits of Edwards's complaint. Unlike in *Moore*, Edwards's time to appeal has not expired. See *Moore*, 114 Ill. 2d at 540, 104 Ill.Dec. 230, 502 N.E.2d 727 ("Our failure to dispose of this action * * * would waste judicial resources as well as be unjust to Moore, because his time to appeal has now expired."). We likewise do not consider the issue presented to be important to the administration of justice. See *Foreman*, 118 Ill. 2d at 98, 112 Ill.Dec. 714, 514 N.E.2d 180 ("[W]e do not consider that the questions as presented here are of such importance to the administration of justice that they necessitate this court's exercise of its supervisory authority."). Accordingly, we refuse to address the merits of the parties' remaining arguments.

¶ 25 CONCLUSION

¶ 26 For a writ of prohibition to issue, a petitioner must demonstrate that all four of its requirements have been met. *Zaabel*, 209 Ill. 2d at 131-32, 282 Ill.Dec. 748, 807 N.E.2d 372. Edwards fails to establish that the normal appellate process would not afford an adequate remedy or will cause him irremediable harm. We decline to nonetheless address the merits of Edwards's complaint because it

does not present an issue that is important to the administration of justice.

¶ 27 Writ denied.

Chief Justice Karmeier and Justices Thomas and Theis concurred in the judgment and opinion.

Justice Kilbride dissented, with opinion, joined by Justices Burke and Neville.

DISSENT

¶ 28 JUSTICE KILBRIDE, dissenting:

¶ 29 Petitioner, Kenin L. Edwards, was convicted by a jury of two counts of the purported crime of "unlawfully acting as a timber buying agent for multiple licensed timber buyers." Before the trial court could sentence Edwards, however, this court allowed his petition seeking prohibition relief and stayed sentencing. The crux of Edwards's petition was that he had been charged, and convicted, of an insufficiently defined regulatory offense. Indeed, a review of the applicable administrative rule demonstrates that Edwards has been convicted of an alleged regulatory offense that does not exist. In addition, his convictions are based on alleged conduct that does not violate the regulation relied on in the State's information.

¶ 30 The majority fails to acknowledge this injustice. Instead, the majority agrees with the State that Edwards should relitigate this matter in the ordinary appellate process because he does not meet the formal requirements for prohibition relief. *Supra* ¶¶ 24-26. Even if I agreed with

the majority that Edwards is not entitled to prohibition relief, I cannot agree with the majority's decision to ignore the critical error underlying Edwards's convictions. For the reasons explained below, I believe that this court should exercise its supervisory authority to direct the circuit court to vacate Edwards's convictions. Thus, I respectfully dissent.

¶ 31 In opposing Edwards's petition, the State argues, in relevant part, that section 11(a) of the Timber Buyers Licensing Act (Act) criminalizes the violation of administrative rules and regulations promulgated under the Act. 225 ILCS 735/11(a) (West 2016). Initially, as the State correctly concedes, it is important to recognize that the information did not rely on section 11(a). Putting that fundamental defect aside for the sake of argument, I tend to agree with the State's general proposition that the legislature has criminalized violations of administrative rules under section 11(a) of the Act.

¶ 32 It is undisputed that both counts in the information charging Edwards with a criminal offense relied, in relevant part, on the administrative rule found in section 1535.1(b) of Title 17. 17 Ill. Adm. Code 1535.1(b) (2003). Logically, then, this court's analysis should focus on the administrative rule that the State alleges that Edwards violated. The majority, however, does not even cite, let alone analyze, the language of section 1535.1(b) of Title 17, the administrative rule at the heart of the dispute here. In its entirety, that rule provides:

"(b) Only persons listed with the Department [of Natural Resources] as authorized buyers may represent the licensee. Authorized buyers shall designate in all contractual arrangements that the licensee is the timber buyer. Failure to

comply with this provision shall constitute 'buying timber without a timber buyer's license.' Authorized buyers may only be listed on one license. To be eligible to hold a timber buyer's license, the applicant must be at least 18 years of age." 17 Ill. Adm. Code 1535.1(b) (2003).

For purposes of this case, section 1535.1(b) of Title 17 is a rather simple and straightforward administrative rule. It plainly identifies and defines a single regulatory offense—"buying timber without a timber buyer's license."

¶ 33 Although the State's information cited that rule in charging Edwards, the State did not allege that Edwards committed the actual offense defined by section 1535.1(b) of Title 17. Instead, in what has to be a truly unprecedented maneuver, the State relied on that rule to charge Edwards with a completely different offense. Specifically, the State alleged that Edwards committed two counts of the purported regulatory offense of "unlawfully acting as a timber buying agent for multiple licensed timber buyers."

¶ 34 It is undisputed, however, that section 1535.1(b) of Title 17 does not contain any reference to the offense Edwards was alleged to have committed, let alone identify the elements of that charged offense. Although Edwards was convicted of two counts of what appears to be a completely new regulatory offense, the State has never identified the elements of this supposed regulatory offense despite the circuit court twice allowing the State to amend its information. Likewise, the majority here never identifies the name of the underlying offense that supports Edwards's convictions. Instead, the majority states that Edwards was

"charged by information with two violations of the Timber Buyers Licensing Act." *Supra* ¶ 3.

¶ 35 It is not clear from the State's argument in this court how an administrative rule can be used to support a criminal conviction of an alleged regulatory offense that the rule itself never identifies or details. The State has not cited, and my research has not revealed, any legal authority allowing the State to rely on an administrative regulation that defines one regulatory offense to obtain a criminal conviction for a completely different, and undefined, regulatory offense. But that is exactly what has occurred in this case.

¶ 36 If that glaring deficiency is not sufficiently concerning to the majority, it is also readily apparent from the rule's plain language that the prohibitions of section 1535.1(b) of Title 17 are inapplicable to the conduct that was charged against Edwards in the information. Count I of the information alleged that Edwards "knowingly acted as an authorized agent for multiple licensed timber buyers, being listed as an agent for timber buyer Trent Copelen and acted as agent for timber buyer Jonathan Luckett and represented himself as a timber buyer when attempting to enter into an agreement with Donald Cook." Count II alleged, in relevant part, that Edwards "knowingly acted as an authorized agent for multiple licensed timber buyers, being listed as an agent for timber buyer Trent Copelen and acted as an agent for timber buyer Jonathan Luckett in selling timber to Leroy Yoder of Plainview Pallet, Tom Farris of Farris Forest Products, John Peters of River City Hardwood, Inc.,

Norman Hochstetler of Oak Ridge Lumber, LLC, and Michael Eichen of Eichen Lumber Company, Inc."

¶ 37 As previously explained, the only administrative rule cited in the State's information that could conceivably apply to the charged conduct is the rule contained in section 1535.1(b) of Title 17. The uncontested record, however, shows that the alleged conduct does not violate any part of that rule's four requirements.

¶ 38 First, an offender could violate the rule by failing to be listed with the Department of Natural Resources as an authorized buyer to represent the timber buyer licensee. 17 Ill. Adm. Code 1535.1(b) (2003). Neither count of the information alleged that Edwards was not listed with the Department of Natural Resources as an authorized buyer. Second, an offender could violate the rule by failing to designate in all contractual arrangements that the licensee is the timber buyer. 17 Ill. Adm. Code 1535.1(b) (2003). Neither count of the information alleged that Edwards violated this provision in any contractual arrangements. Third, the rule could be violated if the offender is "listed" as an authorized buyer on more than one timber buyer's license. 17 Ill. Adm. Code 1535.1(b) (2003). Both counts of the information allege that Edwards was "listed as an agent for timber buyer Trent Copelen," but the charges do not specify any other person for whom Edwards was "listed" as an authorized buyer or agent. In other words, Edwards appears to have complied with this provision. Last, an offender could violate the rule by applying for a timber buyer's license before reaching the age of 18 years. 17 Ill. Adm. Code 1535.1(b)

(2003). Neither count of the information alleges that Edwards applied for a timber license when he was a minor.

¶ 39 To summarize, the rule in section 1535.1(b) of Title 17 can potentially be violated in only four ways, but neither charge in the two-count information alleged that Edwards violated any of those four requirements or prohibitions. In other words, it does not even appear from the face of the State's information that Edwards belongs to a category of offender that the administrative rule was intended to govern. Presumably, that is why the State chose to charge Edwards with committing a completely different and undefined regulatory offense than the one actually identified by section 1535.1(b) of Title 17.

¶ 40 I understand my colleagues' reluctance to apply this court's historically narrow jurisprudence on the extraordinary remedy of prohibition relief. Nonetheless, this court need not turn a blind eye to a clear injustice. Nothing is to be gained from expending more judicial resources on this case by forcing Edwards to relitigate this matter in the lower courts. And, contrary to the State's argument here, this case presents an error much more serious than a simple defect in the charging instrument.

¶ 41 While supervisory orders are generally disfavored outside of our leave-to-appeal docket (*People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 212, 330 Ill.Dec. 761, 909 N.E.2d 783 (2009)), this court recently reaffirmed in a unanimous decision that our supervisory authority over Illinois's judicial system is "unlimited in extent and hampered by no specific rules" (*Vasquez Gonzalez v. Union Health Service, Inc.*, 2018 IL 123025, ¶ 16, 429 Ill.Dec. 32, 123 N.E.3d 1091). Of course, we exercise our supervisory authority with restraint and "only under exceptional circumstances."

Vasquez Gonzalez, 2018 IL 123025, ¶ 17, 429 Ill.Dec. 32, 123 N.E.3d 1091.

¶ 42 I believe that this case presents that kind of exceptional circumstance. In what is hopefully an exceedingly rare occurrence, the State in this case has obtained a criminal conviction for a regulatory offense that does not exist based on charged conduct that is not criminalized by the regulation cited in the information. We should not hesitate to exercise our supervisory authority to correct this clear injustice. See *In re Estate of Funk*, 221 Ill. 2d 30, 97-98, 302 Ill.Dec. 574, 849 N.E.2d 366 (2006) (explaining that this court's supervisory authority "is bounded only by the exigencies which call for its exercise"). If a majority of this court does not believe this case qualifies for prohibition relief, it should, in my opinion, exercise its plenary supervisory authority to enter a supervisory order directing the circuit court to vacate Edwards's criminal convictions.

Accordingly, I respectfully dissent.

¶ 43 JUSTICES BURKE and NEVILLE join in this dissent.