

**Motions for Reconsideration
are Prohibited.**

See ALC Rule 68 RECEIVED

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APR 15 2024

Mark Bolte, #304800,
Appellant,

Docket No. 23-ALJ-04-^{SG} Court of Appeals
Hon. Robert L. Reibold

v.

South Carolina Dep't
of Carolina,
Respondent.

MOTION TO ALTER OR AMEND
ORDER
ALC Rule 68; Rule 59(e), SCRCP

The Appellant, Mark Bolte, in the above-captioned case moves this Court to:

- I. Alter, amend, or reconsider its order dismissing appeal in this case, pursuant to ALC Rule 68 and Rule 59(e) of the SCRCP, filed on March 12, 2024, received by the Allen Dale Correctional Institution Mailroom on March 18, 2024, (see attach copy of envelope stamped "Received ACI Mailroom March 18, 2024") and signed for and received by the Appellant on Tuesday March 19, 2024 and enter a new Order granting the relief requested by the Appellant
- II. Alter, Amend, or Supplement the findings and conclusion of law contained in its March 12, 2024, final order.

FINDINGS OF FACT

While the court has ruled that Appellant case is dismissed for lack of jurisdiction, without reviewing record on appeal ("ROA") based on Appellant's failure to exhaust his administrative remedies. The Appellant submits this Motion to ensure that he has "enabled the Court to rule properly after it has considered all relevant facts, law and arguments." Staubes v. City of Folly Beach, 529 S.E.2d 543, 546 (2000) and to preserve issues for appellant review, Home Med. Sys. v. S.C. Dept. of Revenue, 677 S.E.2d 582, 586 (2009).

Appellant respectfully submits that this Court should amend, alter and reconsider its findings of fact

The following issues are presented:

Issue 1. The Court erred in dismissing Appellant's appeal for lack of jurisdiction based on Appellant's failure to exhaust his administrative remedies. ARTSM# 23-03186549

Appellant filed a Step 1 grievance (Form 10-5) on July 28, 2023, requesting he be paid the prevailing wages for his voluntary participation in SCDC's Prison Industries Program (PIP). On August 1, 2023, the Step 1 grievance was denied, and forwarded to Step 2 of the appeal process, stating:

"Due to the nature of your appeal, it has been forwarded to the Step 2 appeal process. Please refer to the attached Prevailing Wage Memo provided by SCDC Office of General Counsel/Inmate Grievance Branch for additional information regarding your appeal." In the Memo, Office of General Counsel states that "Pursuant to SCDC Policy GA-01.12, 'Inmate Grievance System,' the SCDC advocates timely and efficient resolution of complaints and grievances brought to the attention of administrators by inmates. To this end, the Department will develop, administer, and implement an inmate grievance accessible to all inmates. The appeal of your grievance requires further investigation and evaluation. However, due to the volume of incoming prevailing wage grievances and the extenuating nature of your appeal, additional time is needed to process your grievance. Consequently, it will be held in abeyance while the authorized personnel complete their investigation and evaluation of your grievance. Upon the conclusion of this investigation and evaluation of your grievance, your grievance will be processed in accordance with applicable policies and procedures."

Without allowing Appellant to present his arguments and issues on Step 2 grievance (Form 10-5g) and the SCDC's failure to allow Appellant to sign Step 2 grievance rendered the grievance system inadequate, null and void as the result of SCDC's misconduct, inappropriate

of grievance process handling as well as machinations on behalf of SCDC rendered administrative remedies unavailable

As Step 1 & Step 2 grievance (Exhibit #1 attached) reveal that SCDC manipulated the grievance process, operating as a "dead end!"

Appellant asserts that he should be exempt from exhausting administrative remedies due to SCDC's misconduct, inappropriate handling of the grievance process.

In Ross v. Blake, 136 S.Ct. 1850 (2016) the United States Supreme Court set forth three scenarios where the administrative process is considered 'unavailable'; the Appellant asserts that the third scenario applies to this case - (3) the administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation or intimidation, 578 U.S. 632, 643-644. Appellant asserts that through SCDC's machinations and misrepresentation rendered the administrative process available.

The forwarding of Step 1 grievance to the Step 2 appeal level without allowing him to present his arguments on Step 2 grievance and adopting his signature [as Appellant's signature is missing where he was required to sign the Step 2 grievance as well as put his argument/complaint on the Step 2 grievance. Appellant could not exhaust his administrative remedies through no fault of his.

(9) Appellant further asserts that the Court erred in failing to have SCDC file the Record on Appeal ("ROA") as he believes the ROA would reveal it would have been a vain or futile act to pursue an administrative remedy where SCDC filed Step 2 grievance, denying Appellant the right to present his argument/facts on Step 2 and Appellant's signature does not appear in signature space to initiate and make Step 2 grievance legal and valid. "Futility, however, must be demonstrated by a showing comparable to the administrative agency taking 'a hard and fast position that makes an adverse ruling a certainty.'" Law v. S.C. Dept. of Corr., 629 S.E.2d 642, 650 (2006) (citing Brown v. James, 697 S.E.2d 604, 611 (Ct. App. 2010);

Thetford Props IV LTD P'ship v. U.S. Dep't of Hous. and Urban Dev., 907 F.2d 445, 450 (4th Cir 1990). Not only has SCDC taken that hard and fast position that makes an adverse ruling a certainty for Appellant but numerous other inmates

Appellant further contends that the Court erred in dismissing his appeal after ordering SCDC file the ROA in his order dated and filed February 12, 2024, giving the the Respondent SCDC forty-five (45) days from the date of said order, and was not yet due at the time of Order dismissing appeal (Order p.2).

Considering Issue 1 and 1(a) above, Appellant contends that he should be exempt from exhaustion of administrative remedies and suggests that the Court amend or alter its order of March 12, 2024, Order Respondent to File ROA, and allow Appellant to file his arguments as presented here.

Issue #2: The court erred in its findings, are in error, as Policy ADM-15.13 section 12.1 was not referenced in response to Appellant's Step 1 grievance (see attached Step 1 grievance) and had appellant not been denied the right to present his argument/facts on Step 2 grievance ADM-15.3 would have been presented to SCDC. Appellant asserts that the Court erred in finding that Policy ADM-15.13 is a policy/procedure grievance. Torrence v. SCDC, 861 S.E.2d 36 (June 2021) and Ackerman v. SCDC, 782 S.E.2d 757 (CA App 2016) is instructive in this case as Appellant's grievance was timely filed and he was not allowed allowed to raise any argument on Step 2 grievance due to SCDC's misconduct, inappropriate handling of the grievance process and machinations by SCDC. As SCDC has had twenty-one years to remedy its continuous and willful violation of Appellant's statutory rights. Torrence and Ackerman held that inmate grievances were excepted from the 15-day filing deadline. The Court should apply Torrence and Ackerman to the present case. Appellant was

filed an ARTSM #23-03186549 requesting his pre-prevailing wages.

Issue #3 Appellant was awaiting the ROA but had to have family members go online and obtain his work history and hours worked.

At the PIP-Private Sector, Appellant worked in the Furniture Plant from 5/19/05 to 12/22/06 as Industries Trainee and from 12/23/05 to 2/1/06 as furniture assembler for a total of 32 weeks and was paid fifty cents to One dollar per hour. Appellant believes he is owed \$9,280.06 as prevailing wage was \$9.42 per hour.

At the Lee CI - WWW.FLC.DATA CO as a machine operator from 3/18/2010 to 6/3/2010; 6/16/2010 to 10/28/2010; 11/23/2010 to 4/18/2011 and as a material handler/equipment operator paid per hour, worked 8640 hours (216 weeks times 40 hours) and (216 weeks x 30 hours) paid per hour.

Appellant asserts that SCDC owes him \$56,539.60 based on the prevailing wage for furniture assembler in 2005 was \$9.42 per hour;

Machine Operator in 2012 was \$8.62 per hour;

Material handler in 2012 was \$13.13 and

Equipment Operator in 2014 was \$8.88.

Issue #4 Appellant asserts that SCDC has continuously and willfully violated his statutory rights in failing to pay him prevailing wages in violation of §24-3-430 (D) in open defiance of the South Carolina legislative mandate that prisoners were to be paid prevailing wages for services performed in SCDC's PIP-Private and as advised in a letter from Deputy Attorney of South Carolina Robert D. Cook advised Senator Michael Fair in a letter dated October 17, 2002 and quotes a memorandum by SCDC's General Counsel dated March 23, 2001 provided to Senator Fair that §24-3-430 was mandatory to be paid prevailing

wages.

Appellant should be exempted from exhaustion of administrative remedies for the foregoing reasons.

CONCLUSION

Appellant asserts for the foregoing reasons, that that this court should reconsider its order and alter or amend its order and grant the relief requested. In the alternative, the findings of fact should be supplemented to include the facts set forth herein.

Respectfully Submitted,
x MARK BOLTE
Mark Bolte #304800
ACI F3-A40
1057 Revolutionary Trail
Fairfax, SC 29829

Dated this 25th day of March, 2023

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Mark Bolte, 304800,
Appellant,

v.

South Carolina Depart-
ment of Corrections,
Respondent.

Docket No. 23-ALJ-04-0567-AP

Hon. Robert L. Reibold

CERTIFICATE OF SERVICE
RECEIVED

APR 15 2024

SC Court of Appeals

I, Mark Bolte, declare under the penalty of perjury, that I this 25th day of March, 2024, served a true copy of Appellant's Motion To Alter or Amend Order pursuant Rule 59(e), SCRCP, on Respondent, by placing in an envelope and placing envelope and contents in Interdepartment Mail at the Allendale Correctional Institution Mailroom, properly addressed as follows:

Joseph P. Shakibnasab, Esq.
Staff Attorney - Office of General Counsel
S.C. Dept. of Corrections
4444 Broad River Road/P.O. Box 21787
Columbia, SC 29221-1787

Dated this 25th day of March, 2024.

With attached: Exhibit #1
Step 1 & 2 grievance and
Envelope stamped "Received
Allendale Correctional Institution
Mailroom March 18, 2024

x Mark Bolte
Mark Bolte #304800
Allendale Corr. Inst. F3-A40
1057 Revolutionary Trail
Fairfax, SC 29827

Mark Bolte #304800
ACI F3-A40
1057 Revolutionary Trail
Fairfax, SC 29827

March 25th 2023

Hon. Robert L. Reibold
Administrative Law Judge
Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, SC 29201

RECEIVED

APR 15 2024
SC Court of Appeals

Re: Mark Bolte #304800 v. S.C. Dept. of Corrections
Docket No. 23-ALJ-04-0567-AP
Motion To Alter or Amend Order
Rule 68(ALC); 59(e), SCRCP

Dear Judge Reibold,

Enclosed for the court, please find enclosed the original and one copy of Appellant's Motion To Alter or Amend Order pursuant to ALC Rule 68 and Rule 59(e), SCRCP with envelope stamped: "Received Allendale Correctional Institution Mailroom March 18, 2024" and Exhibit #1-Step 1 & 2 Grievance and Certificate of Service. Please date-stamp the copy and return to me in the enclosed self-addressed envelope (Interdepartment mail).

Respectfully Submitted,
x Mark Bolte
Mark Bolte

Enclosure

cc: copy w/certificate of Service

Joseph P. Shakkibanasab, Staff Attorney
Office of Gen. Counsel - SCDC

Mark Bolte #304800
ACI FB-A40
1057 Revolutionary Trail
Fairfax, SC 29827
March 25th, 2024

Joseph P. Shakibanasab
Staff Attorney
Office of General Counsel
S.C. Dept. of Corr.
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221-1787

RECEIVED

APR 15 2024
SC Court of Appeals

Re: Mark Bolte #304800 v. S.C. Dept. of Corr
Docket No. 23-ALJ-04-0567-AP

Dear Mr. Shakibanasab,

Enclosed please find my Motion to Alter or Amend
Order pursuant to ALC Rule 68, and Rule 59(e), SCRPC,
with Certificate of Service and copy of envelope date-
stamped "Received Allendale Correctional Institution
Mailroom March 18, 2024" with Exhibit 1 - Step 1 & 2
Grievance.

Sincerely,
x Mark Bolte
Mark Bolte

Enclosure
original to Hon. Robert L. Reibold

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: <u>MARK R. BOUTE</u>	OFFICE USE ONLY
SCDC NUMBER: <u>304800</u>	Grievance No. <u>MI-1137-13</u>
INSTITUTION: <u>ALLENDALE</u>	Code: General <u>MY/VS</u>
HOUSING UNIT: <u>F3A-40</u>	Policy _____
WORK ASSIGNMENT: <u>LBU - VM HIAISON</u>	Disc. Hear. _____
	Class. _____
	PREA _____
	Date Received <u>11/12/13</u>
	IGC Initials <u>MS</u> <u>11/12/13</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

REQUEST # 23-03186549 / AUTHOR # 0063742

MCCORMICK (5-19-05) - (2-7-06) PIP

LEE COUNTY (3-18-10) - (4-18-11) PIP

LEE COUNTY (4-19-11) - (2-24-14) PI

REQUESTING PREVAILING WAGES FOR ABOVE TIME PERIODS.

MARK R. BOUTE 7-28-13

Grievant Signature

Date

ACTION REQUESTED: TO BE PAID PREVAILING WAGES

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

Due to the nature of your appeal, it has been forwarded to the Step 2 level of appeal process. Please refer to the attached Prevailing Wage Memo provided by SCDC Office of General Counsel/Inmate Grievance Branch for additional information regarding your appeal.

[Signature]

IGC Signature

11/12/13

Date

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only

INMATE NAME: Mark Bolte
SCDC NUMBER: 304800
INSTITUTION: ACT
HOUSING UNIT: _____
WORK ASSIGNMENT: _____

Grievance No. ACT-0297-23
Code: General my/lws
Policy _____
Disc. Hear. _____
Class _____
PREA _____
Date Received: _____
IGC Initials: _____
Date Received: 8/17/23
IGA Initials: JAB

RECEIVED
INMATE GRIEVANCE
AUG 07 2023

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

In accordance with SCDC Policy GA-01.12, "Inmate Grievance System," due to the nature of allegations you have raised in your Grievance, it has been forwarded to the Inmate Grievance Branch Central Office and Office of General Counsel for a response. Inmate's signature has been adopted from SCDC 10-5, Step 1 Inmate Grievance Form.

Grievant Signature _____ Date _____

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE REVERSE SIDE FOR RESPONSIBLE OFFICIAL'S DECISION & REASON

Responsible Official Signature Burt Vincent Date 10-25-23

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

MARK P. BOLTE 10-31-23
Grievant Signature Date

Chris Allen 10-31-2023
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review. No additional pages will be permitted.
3. Submit this completed form with your copy of the Step 1 form by placing in the Grievance Box within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

Bolte, Mark 304800, ACI-0227-23

In your grievance, you are requesting adjustments to your inmate pay pursuant to Torrence v. South Carolina Department of Corrections (2021). The South Carolina Court of Appeals' opinion in Torrence was filed on June 30, 2021. You submitted your Step 1 Grievance regarding this matter on July 24, 2023, approximately two years and one month after the Court of Appeals issued its opinion. Accordingly, your grievance is untimely under SCDC Policy ADM-15.13, section 12.1. This policy states as follows:

12. PROBLEMS WITH PAY:

12.1 Inmates must report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error. The inmate should maintain a record of the ARTSM reference number. The inmate pay designee will review the case and determine whether any additional pay is owed. Payroll corrections will be limited to the following:

- If the inmate fails to notify the Agency in writing and within 15 days, no back pay will be given.
- The pay rate will be adjusted to the proper rate amount for future payrolls in accordance with these procedures.
- The inmate may receive additional pay owed for the previous two (2) pay periods only.

SCDC Policy ADM-15.13 (12.1) (Issue Date June 3, 2014).

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within 30 days of receipt.

STATE OF SOUTH CAROLINA
Administrative Law Court
EDGAR A. BROWN BUILDING
1205 PENDLETON STREET, SUITE 224
COLUMBIA, SOUTH CAROLINA 29201

410440

Mark Bolte, #304800
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

LEGAL MAIL



US POSTAGESM PITNEY BOWES

ZIP 29201 \$ 000.88⁰
02 1W
0001392766 MAR 12 2024

RECEIVED

MAR 13 2024

MAILROOM
ACK