

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 28 2024
SC Court of Appeals

James A. Tucker # 260993)
Appellant,)

Docket No. 2024-000718
Grievance No. 0239-23

v.)

S.C. Dept. of Corrections)
Respondent,)

Rule - 60, (a),(b), (1),(3)
SCRPC.

RELIEF FROM JUDGMENT OR ORDER

Now Comes, James A. Tucker # 260993 (Appellant), Pursuant to Rule - 60 (a), (b), of the rules of civil procedures moves this court to vacate and set aside the judgment entered in this appeal on September 10, 2024., for reasons set forth below.

1. After James A. Tucker # 260993, (Appellant), file a motion to correct clerical error on or about July 18, 2024., Court filed July 23, 2024.,

2. Respondent's Return to Appellant's Motion to Correct clerical Error and Motion To Remand on or about August 26, 2024., fraudulently stating Appellant is not actually seeking to correct a "clerical error," but instead asking this court to change and add language to the ALC'S order. See: Attached Copy.

3. As shown by the Affidavit of James A. Tucker # 260993, Statement of Facts. See: Attached Affidavit of James A. Tucker# 260993.

4. The facts as described above demonstrating that Respondent's misrepresentation, fraudulent ack, fraud upon the court, constitute cause for the court to vacate and set aside the court's order of September 10, 2024.

Accordingly, Appellant ask that, due to the courts oversight or omission remand to the Administrative Law Court with instructions to remand to Respondent's for issuance of a corrected Step 2, grievance, vacate Respondent's Step 2, grievance dated October 9, 2024., and restore Appellant's original Step 2, grievance final agency decision dated October 25, 2023, and signed by Appellant October 31, 2023.

October 22, 2024.


James A. Tucker # 260993



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

August 26, 2024

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211


RE: James Anthony Tucker, # 260993 v. South Carolina Department of Corrections
Appellate Case No. 2024-000718

Dear Ms. Kitchings:

Enclosed please find Respondent's **Return to Appellant's Motion to Correct Clerical Error and Motion to Remand** in the above referenced matter, along with **Proof of Service**. A copy of the same is being mailed to Appellant today.

Thank you for your attention to this matter, and please do not hesitate to contact me should there be any questions or concerns.

Sincerely,


Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections
S.C. Bar No. 73562

cc: James Tucker, # 260993
Allendale Correctional Institution
HAA-0012
1057 Revolutionary Trail
Fairfax, South Carolina 29827

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

ALC Case No. 23-ALJ-04-0544-AP
Appellate Case No. 2024-000718

JAMES ANTHONY TUCKER, # 260993,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

**RETURN TO APPELLANT’S MOTION TO CORRECT CLERICAL ERROR
AND
MOTION TO REMAND**

On July 18, 2024, Appellant submitted a “Motion to Correct Clerical Error.” In that Motion, Appellant is not actually seeking to correct a “clerical error,” but is instead asking this Court to change and add language to the ALC’s Order. Respondent objects to Appellant’s Motion since he is seeking to substantively change the ALC’s Order, not correct a clerical error.


That being said, since it does appear that there was confusion below regarding the location of Appellant’s job(s), the appropriate remedy would be a remand. Accordingly,

Respondent hereby moves this Court to remand the matter to the ALC with instructions to remand to the Department for issuance of a corrected Step 2 grievance response.

WHEREFORE, Respondent respectfully requests that this matter be remanded to the Administrative Law Court pursuant to the parameters described above.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 

CHRISTINA C. BIGELOW
Deputy General Counsel
Office of General Counsel
S.C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

August 26, 2024

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

ALC Case No. 23-ALJ-04-0544-AP
Appellate Case No. 2024-000718

JAMES ANTHONY TUCKER, # 260993,

APPELLANT,

v.

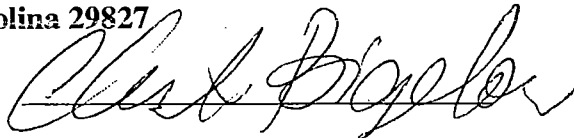
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this date, she mailed a copy of the **Return to Appellant's Motion to Correct Clerical Error and Motion to Remand** to Appellant, addressed as follows:

**James Tucker, # 260993
Allendale Correctional Institution
HAA-0012
1057 Revolutionary Trail
Fairfax, South Carolina 29827**



Christina Catoe Bigelow
Deputy General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

August 26, 2024

The South Carolina Court of Appeals

James Anthony Tucker, #260993, Appellant,

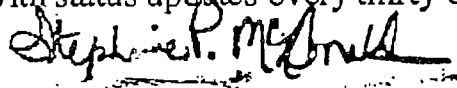
v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2024-000718

ORDER

The Administrative Law Court (ALC) dismissed Appellant's appeal for failure to exhaust his administrative remedies. According to the ALC, Respondent denied Appellant's Step 2 Grievance as untimely. On July 23, 2024, Appellant filed a motion to remand this matter to the ALC to correct a "clerical error" in the order. Respondent filed a return, opposing Appellant's request and arguing Appellant sought a substantive change to the order. However, Respondent asked this court to remand the matter to the ALC with instructions to remand to Respondent for issuance of a corrected Step 2 Grievance response because "there was confusion below regarding the location of Appellant's job(s)." After careful consideration, we deny Appellant's motion and grant Respondent's request for a remand. We hold this appeal in abeyance and remand to the ALC. The ALC shall remand this appeal to Respondent for issuance of a corrected Step 2 Grievance response. Respondent shall provide this court with status updates every thirty days.



FOR THE COURT

Columbia, South Carolina

cc:

James A. Tucker, 260993

Kensley Evans, Esquire

Christina Catoe Bigelow, Esquire

The Honorable Jana E. Shealy

The Honorable Ralph King Anderson, III

FILED
Sep 10 2024

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Inmate Copy

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: <u>James Anthony Tucker</u>	OFFICE USE ONLY
SCDC NUMBER: <u>260993</u>	Grievance No. <u>ACT-1231-23</u>
INSTITUTION: <u>Allendale Correctional Institution</u>	Code: General <u>MY/WS</u>
HOUSING UNIT: <u>F3-A12</u>	Policy _____
WORK ASSIGNMENT: <u>Dorm Worker</u>	Disc. Hear. _____
	Class. _____
	PREA _____
	Date Received <u>08/03/23</u>
	IGC Initials <u>IG</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.)

I am filing this grievance in regard to my prevailing wages. I participated in the P.I. and P.I.P at Broad River Correctional Institution. I participated approx. April 2014 thru Sept. 2015 and June 2016 thru Feb. 2023

KIOSK # 23-03196432

James Tucker 8-3-23
 Grievant Signature Date

ACTION REQUESTED: To receive my prevailing wages for the participation/work in these Prison Industries.

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.

Shirley Chisolm 8/14/23
 IGC Signature Date

WARDEN'S DECISION AND REASON:

(This section is crossed out with a large X)

N/A -----
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

N/A -----
Grievant Signature Date

N/A -----
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

James A. Tucker # 260993)
Appellant,) Docket No. 2024-000718
) Grievance No. 0239-23
)
v.)
) **AFFIDAVIT**
)
) **OF**
S.C. Dept. of Corr.)
Respondent,) **JAMES A. TUCKER**
_____)

I James A. Tucker # 260993, under penalty of perjury states the following:

I make this affidavit based on personal knowledge unless stated otherwise. I am over the age of (21) years old, and a competent adult and a resident of the State of South Carolina Department of Corrections.

1. On July 18, 2024., I filed a Motion To Correct a Clerical error. The Clerical Error is in the Administrative Law Court Order dated April 10, 2024. The clerical error specifically states " Appellant was correctly paid the statutory prevailing wages while working in the prison industries enhancement certification program (PIECP), out of Livesay Correctional Institution

2. I James A. Tucker 260993, was not paid prevailing wage at Livesay Correctional Institution for my labor/work, at any time, because I never was at Livesay Corr. Inst. working in Prison Industries.

3. I James A. Tucker # 260993, worked/labored in the (PIE) program from April 2014 through September 2015., at Broad River Correctional Institution (King of Karts).

4. I James A. Tucker # 260993, worked/labored in PIE program from June 2016 through February 2023 at Broad River Correctional Institution. (Sign Shop).

On August 26, 2024., Respondent's (SCDC) filed a return opposing Appellant's Motion To Correct a Clerical Error, arguing Appellant sought a substantive change to the order. Respondent's (SCDC), fraudulent claim in their return of August 26, 2024., claims the error was in the Step 2 Grievance.

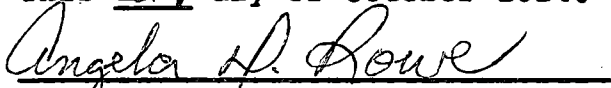
5. In James A. Tucker # 260993, original Step 2 Grievance dated June 8, 2023., there was not any mention of locations of Appellant's jobs in the prison industries.

6. Appellant's Step 1 Grievance dated August 3, 2023., specifically states: I participated in P.I. at Broad River Correctional Institution from April 2014 through September 2015, and June 2016 through February 2023.

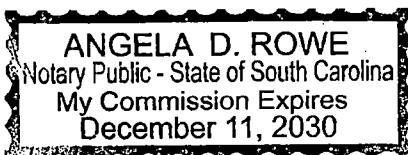
October 22, 2024.


James A. Tucker # 260993

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 22nd day of October 2024.


Notary Public For South Carolina

My Commission Expires: December 11, 2030.



CERTIFICATE OF SERVICE

Docket No. 2024-000718
Grievance No. 0239-23

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I do hereby certify that I have serve the following counsels of record Rule - 60, (a),(b)(1)(2) SCRPC, RELIEF FROM JUDGMENT OR ORDER, by placing the same in the United States mail with sufficient postage affixed on this date below:

October 22, 2024.


James A, Tucker # 260993

Enclosures

CC: The Honorable jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina - 29211

crisrina Catoe Bigelow
Deputy General Counsel
S.C. Department of Corrections
S.C. Bar No. 73562

James A. Tucker # 260993
Allendale Corr. Inst. F-3, A-12
1057 Revolutionary Trail
FairFax, South Carolina - 29827

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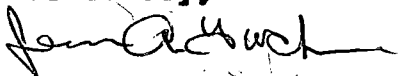
Re: James A. Tucker # 260993 v. SCDC,
Docket No. 2024-000718, Grievance No. 0239-23

Dear Ms. Kitchings:

Enclosed you will find the original and a copy of the Rule-60 (a),(b) (1),(3) SCRCF., for your filing. Please provide the Honorable Judge with a copy of the motion, and return a copy to me for my record in the self-addressed envelope I have provide postage prepaid.

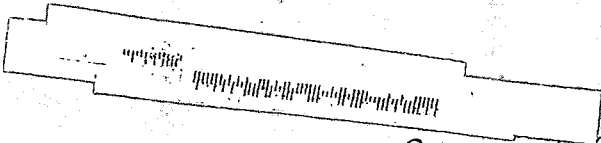
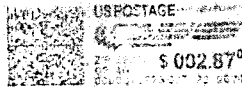
Thank you very much.

Sincerely,



CC: Cristina Catoe Biglow
Deputy General Counsel
(SCDC) Bar No. 73562

James Anthony Tucker 260993
Allendale CI F3-A12
1057 Revolutionary Rd
Fairfax, S.C 29827



Clerk of Court
~~In~~ The Court of Appeals
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