

SPENCER WATSON  
Appellant  
192660

V.  
SOUTH CAROLINA  
DEPT. OF CORR.  
Respondents

IN THE SUPREME COURT

8/2/19 Appeal to S.C.  
Supreme Court  
PURSUANT TO  
S.C. CODE ANN.  
§1-23-610 RULE  
242 SCACR

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AUG 06 2019

S.C. SUPREME COURT

RE: CASE# -  
2019-000434

The Appellant comes before  
the court to have the court look  
over all judgments of the lower  
court and step 1 and 2 Grievances  
in case above.

① The Appellant states by the decision  
in *Bolin v. South Carolina Department  
of Corrections*, 415 S.C. 276, 781  
S.E.2d 914 (Ct. App. 2016), rehearing  
denied (Feb. 24, 2016) methamphetamine has  
been changed from a violent offense to  
non-violent offense and taken from under  
§16-1-60 and ARM robbery of Appellant's  
is to be classified as same or a denial  
of equal protection because meth synonym

IS CRANK -

The Legislature intent to amend § 24-13-100 is clearly seen by them changing the statute, legislature and courts, by changing rights under it, methamphetamine distribution or possession is violent offense and it was classified as violent before Bolin supra was effective.

FOR THE ABOVE CHANGE § 24-13-100 statute to NON-VIOLENT.

2  
Spencer Utsey  
51 Spencer Utsey 192660

LEGAL MAIL ONLY

A statute is remedial and thus is to be construed retroactively, where it creates new remedies for existing rights, unless it violates a constitutional obligation, creates a new right, or divests a vested right, *GATEWOOD v. SOUTH CAROLINA DEPT. OF CORRECTIONS*, COURT OF APPEALS OF SOUTH CAROLINA, MARCH 9, 2016, 416 S.C. 304, 785 S.E. 2d 600.

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S.C. SUPREME COURT

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ONLY

To obtain judicial review of the  
ALS's final decision, the inmate may  
file an appeal with the South Carolina  
Court of Appeals and then with the  
South Carolina Supreme Court S.C.  
Code ANN. § 1-23-610, Rule 242, SCACR.

5 | Spencer Utsey  
599261 W. 192660  
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SPENCER WISEY  
APPELLANT  
192660

8/2/19

Affidavit

v.  
South Carolina  
Dept. of Corr.  
Respondents

RE: case # -  
2019-000434

I do hereby aver that ~~is~~ this is true and accurate to Appellant's knowledge that this is a meritorious claim that Appellant's liberty interests was violated being under a unconstitutional statute 24-13-100 and therefore Appellant should be able to appeal Appellant is indigent and this is stemming from a rehearing from S.C. COURT OF APPEALS filed July 30, 2019.

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S.C. SUPREME COURT

KCI  
F2-B-139  
S/ Spencer Wisey  
SPENCER WISEY 192660

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SPENCER UTSEY  
192660  
Appellant  
v.

SOUTH CAROLINA  
DEPT. OF CORR.  
Respondents

IN THE SUPREME COURT

8/2/19

CERTIFICATE OF  
SERVICE

RE: case # - 2019-  
000434

I do hereby aver that I, Spencer Utsey did serve the S.C. Supreme Court Clerk and General Counsel office and placed copies of Appeal filed July 30, 2019 in S.C. in court of Appeals and place copies in Kirkland CF mail system on about same date 8/2/19

clerk  
S.C. Supreme Court  
P.O. Box 11330  
Columbia, S.C.  
29211

General Counsel  
444 Broad River Rd  
Columbia, S.C.  
29221

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AUG 06 2019

S.C. SUPREME COURT

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# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
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[www.sccourts.org](http://www.sccourts.org)

March 22, 2019

Spencer Utsey, 192660  
MacDougall Correctional Institution  
1516 Old Gilliard Road  
Ridgeville SC 29472

Re: Spencer Utsey v. SCDC  
Appellate Case No. 2019-000434

Dear Mr. Utsey:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at [www.sccourts.org/courtreg](http://www.sccourts.org/courtreg). Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at [www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02](http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02). Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review

filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Spencer Utsey, #192660, Appellant,

v.

South Carolina Department of Corrections, Respondent.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Christina Catoe Bigelow, Esquire  
Jana E. Shealy

# The South Carolina Court of Appeals

Spencer Utsey, #192660, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2019-000434

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## ORDER

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This court construes Appellant's petition to reinstate as a petition to rehear the dismissal of this appeal. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

*Thomas C. Huff*

J.

*Paul W. Thomas*

J.

*A. K.*

J.

Columbia, South Carolina

cc:  
Spencer Utsey, 192660  
Christina Catoe Bigelow, Esquire

**FILED**

*July 30, 2019*



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
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March 22, 2019

Spencer Utsey, 192660  
MacDougall Correctional Institution  
1516 Old Gilliard Road  
Ridgeville SC 29472

Re: Spencer Utsey v. SCDC  
Appellate Case No. 2019-000434

Dear Mr. Utsey:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The judge is not listed and counsel for the respondent is not listed. See Rules 203(e)(2)(A) and 203(e)(2)(E), SCACR.
- The notice of appeal fails to include a statement of when you received written notice of entry of the order or judgment from which this appeal is taken. See Rule 203(e)(2)(C), SCACR.
- A proof of service showing that a copy has been served on the agency and/or the Administrative Law Court has not been provided as required by Rule 203(b)(6), SCACR.
- If you wish to proceed in forma pauperis, a motion will need to be made. Otherwise, the filing fee for filing a notice of appeal will need to be provided in the amount of \$250.00.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Christina Catoe Bigelow, Esquire

# The South Carolina Court of Appeals

Spencer Utsey, #192660, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2019-000434

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## ORDER

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Because Appellant failed to provide proof he timely served the Administrative Law Court with the notice of appeal, this appeal is dismissed. *See* Rule 203(b)(6), SCACR ("When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the agency, the administrative law court (if it has been involved in the case) and all parties of record within thirty (30) days after receipt of the decision.").<sup>1</sup> The remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

cc:  
Spencer Utsey, 192660  
Christina Catoe Bigelow, Esquire

**FILED**

5/3/19

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<sup>1</sup> Because this appeal is dismissed, this court will take no action on Appellant's pending motions.



2018. The Department filed the Record on Appeal on August 10, 2018.<sup>2</sup> On September 21, 2018, the Department filed a Motion to Dismiss (Motion) along with its substantive brief, alleging that the Appellant's case should be dismissed on the basis of *res judicata* because it is the same as an appeal he filed with the ALC in *Utsey v. South Carolina Department of Corrections*, Docket No. 16-ALJ-04-0707-AP (February 23, 2017) (hereinafter "2017 Order"). The Appellant filed a return to the Department's Motion on October 2, 2018 opposing the relief, asserting that there are differences in the two cases which makes *res judicata* inappropriate. The Court denies the Department's motion for dismissal based on *res judicata*.<sup>3</sup> Nevertheless, the Court finds the 2017 Order to be persuasive authority.

In the 2017 Order, the ALC ruled, in pertinent part, that:

This statute [§16-11-330(A)] has not been amended since 1996. Therefore, any changes to Appellant's sentence or sentence calculation would have to be effected by another statute or case law. Section 16-1-90 classifies Appellant's offense as a Class A felony. Class A felonies are subject to Section 24-13-100 (footnote omitted), which defines Class A, B and C felonies as "no parole offenses." In *Bolin*, the Court of Appeals construed specific language in a drug offense statute that repealed Section 24-13-100, *only* insofar as it conflicted with the drug statute's special provisions because of the phrase "notwithstanding any other provision of law." The drug statutes containing the "notwithstanding" provisions have no bearing

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<sup>2</sup> In response to the Record, on August 14, 2018, the Appellant filed what he captioned as a Motion to Object to the State's Discovery, contending that the Record was incomplete and contained "no denials of the allegations/reasons within Grievance #MACCI 10-18..." The Court denies the Appellant's motion.

<sup>3</sup> At first glance, it would seem *res judicata* would bar the Appellant's appeal. See, *Plum Creek Development Co., Inc. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("To establish *res judicata*, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.") The parties here are the same parties before the ALC in the 2017 Order and the subject matter is the same inasmuch as the Appellant again, as he did previously, argues that *Bolin's* recognition of the implicit repeal of § 24-13-100 for certain drug offenses translates into a repeal of this statute for his offense of Armed Robbery. Finally, the 2017 Order did adjudicate the issue – the 2017 Order rejected Appellant's argument made therein that § 24-13-100 had been repealed for the purposes of his conviction. However, this matter is before the Court in its appellate capacity. See, *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and the Court's review is, therefore, limited to the record. *Res judicata* is an affirmative defense that should not be raised for the first time on appeal. See, *Delta Apparel v. Farina*, 406 S.C. 257, 750 S.E.2d 615 (Ct. App. 2013) (stating that a party cannot raise the affirmative defense of *res judicata* for the first time on appeal.) While mindful of the flexibility and lack of formality in the inmate grievance proceedings below, the Court believes it is, nevertheless, constrained by the rules on issue preservation. See, *Wilder Corporation v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but that must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Home Medical Systems, Inc., v. South Carolina Department of Revenue*, 382 S.C. 556, 563, 677 S.E.2d 556, 586 (2009) ("As in other appellate matters, we require issue preservation in administrative appeals.")

on Appellant's case because he was sentenced for armed robbery under a completely separate statute. Therefore, Section 24-13-100 remains in full effect [for Appellant's sentence]. (emphasis in original)

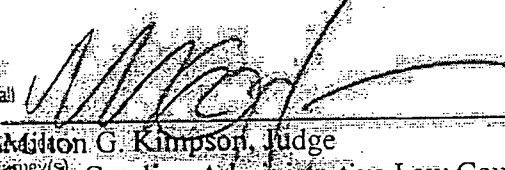
The 2017 Order correctly addressed the legal question presented to the ALC at that time. In his brief in the instant action, Appellant cites to *Bolin* for the proposition that §24-13-100 has been repealed to allow him to escape the 85% requirement for his sentence on the conviction for Armed Robbery under §16-11-330. However, *Bolin* recognized the General Assembly's intent to repeal § 24-13-100 only with regard to certain drug offenses under S.C. Code Ann. § 44-53-375. The Appellant's conviction under § 16-11-330 is not affected by *Bolin*. The Appellant has not cited any intervening appellate court decision which alters the rationale used in the 2017 Order and points to no statutory amendment which impacts the issue. Further, the Court has not been able to discern any change in the law in this regard. Without more, then, the instant appeal is controlled by the legal reasoning cited in the 2017 Order, and the same result must be reached.<sup>4</sup>

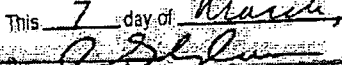
Appellant cites to *Motors Insurance Corporation v. State, et al.*, 313 S.C. 279, 437 S.E.2d 555 (Ct. App. 1993) and *Garnier v. Houck*, 312 S.C. 481, 435 S.E.2d 847 (1993) to argue that because the Department failed to deny the allegations in his Step 1 and Step 2 grievances that § 24-13-100 has been repealed as to him, those allegations have been deemed admitted. While this is generally a correct statement of the law as it relates to pleading in the court of common pleas, the Court is not persuaded that it has any applicability here. As pointed out by the Department in its brief, both Appellant's Step 1 and Step 2 grievances were appropriately denied by the prison officials.

Therefore, for the foregoing reasons the decision appealed from is affirmed and this appeal is hereby **DISMISSED, WITH PRE JUDICE.**

CERTIFICATE OF SERVICE  
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or in the hand of the United States Postal Service addressed to the party(ies) or their attorney(s).

March 7, 2019  
Columbia, SC

  
William G. Kimpson, Judge  
South Carolina Administrative Law Court

This 7 day of March, 2019  


<sup>4</sup>The Court is not aware whether the Appellant sought to appeal the 2017 Order to the South Carolina Court of Appeals. Filing an appeal of that order would have been the proper vehicle to challenge that ruling instead of filing a new inmate grievance. While the Court declined to dismiss this case based on *res judicata*, the Appellant should be mindful that absent a change in law, filing duplicative appeals raising the same issues may result in such actions being declared frivolous. Pursuant to SCALC Rule 62, if the "presiding judge determines that the appeal is frivolous . . . , the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct may require."

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