

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2011CP4603387**

Maurice Shaundell Hope	South Carolina State Of
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<b>PLAINTIFF(S)</b>	<b>DEFENDANT(S)</b>
<b>Submitted by: Maurice Shaundell Hope</b>	<b>Attorney for:</b> <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**       Rule 12(b), SCRPC;       Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);       Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**       Rule 40(j) SCRPC;       Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;       Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;     Reversed;     Remanded;     Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

**ORDER OF DISMISSAL**

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	n/a

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/ Edgar W Dickson  
Circuit Court Judge

2153  
Judge Code

08/20/2013  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on **August 28, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **August 28, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

✓ **Maurice Shaundell Hope** Pci Q2 A 206 430 Oaklawn Rd  
Pelzer, SC 29669  
✓ **Philip Wayne Jamieson** 242 Oakland Ave Rock Hill, SC  
297304022

✓ **Harrison Brant** Office Of Attorney General Po Box 11549  
Columbia, SC 292111549

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

*David Hamilton*

**Court Reporter**

**David Hamilton - Clerk of Court**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS )  
SIXTEENTH JUDICIAL CIRCUIT )

Maurice Shaundell Hope, #292285, )

2011-CP-46-3387 )

Applicant, )

**ORDER OF DISMISSAL** )

v. )

State of South Carolina, )

Respondent. )

FILED - RECEIVED  
2013 AUG 28 AM 9:21  
DAVID HAMILTON  
C.C.C.P. & GS  
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 1, 2011. The Respondent made its Return on April 6, 2012. An evidentiary hearing into the matter was convened on October 10, 2012, at the Moss Justice Center in York, SC. Phillip Jamieson, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. David Sample, Esquire, Christian Hope and Kendra Gordon also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript and the appellate records.

### PROCEDURAL HISTORY

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Applicant was indicted by the June 2008 term of the York County Grand Jury for Armed Robbery (2008-GS-46-2156), Criminal Conspiracy to commit Armed Robbery (2008-GS-46-2157), Kidnapping (2008-GS-46-2158), and

Possession of a firearm during the commission of a violent crime (2008-GS-46-2159). David Sample, Esquire, represented him. On September 10, 2008, Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable John C. Hayes, III sentenced Applicant to confinement for thirty (30) years for Armed Robbery, five (5) years, concurrent, for Criminal Conspiracy to commit Armed Robbery, thirty (30) years, concurrent, for Kidnapping and five (5) years, concurrent, for the possession of a firearm charge.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Hope, Op. No. 2010-UP-480 (S.C. Ct. App. filed December 16, 2010). The Remittitur was issued on January 5, 2011.

In his application for post-conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of trial counsel"
  - a. "Trial counsel failed to properly investigate and prepare for trial"
  - b. "Failure to call witnesses relevant to the defense theory of the case"
  - c. "Failure to argue and preserve legal issues for appellate review"
  - d. "Failure to properly investigate, present evidence, cross-examination and make motion to suppress the evidence"
  - e. "Failure to challenge striking of the panel"
2. "Ineffective assistance of appellate counsel"
  - a. "Appellate Counsel failed to properly research case and present proper issues"

At the hearing, Applicant proceeded on his claims of ineffective assistance of trial counsel for failing to call a certain witness and failing to request a jury instruction concerning alibi witnesses.

#### SUMMARY OF TESTIMONY

Applicant testified he met with Counsel three times while he was in jail as he was denied bond. He stated two offers were made by the State: the first was for fourteen (14) years and the



second for eleven (11) years. He decided to reject both of these. Applicant testified when he met with Counsel, Counsel did not review discovery or discuss trial strategy. On the third visit, Counsel provided copies of Applicant's arrest warrant and the search warrant to Applicant. He also stated Counsel did not give him copies of the co-defendants' statements until after the trial.

However, Applicant's main contention was that he believed Counsel was ineffective for failing to request an alibi charge. He testified the alibi defense was his only defense, and he provided all of the names of the witnesses to subpoena and call on his behalf at trial, yet Counsel did not subpoena all of the witnesses he wanted. Specifically, Applicant stated Tara Retzer's testimony, who was a co-defendant's girlfriend, would have exonerated Applicant by showing that Applicant's co-defendants set him up as a participant in the robbery. However, Ms. Retzer did not testify at Applicant's PCR hearing.

On cross-examination, Applicant admitted Ms. Retzer was not present to testify at his PCR hearing. He also stated he knew what the definition of an alibi is, even without any legal training. Applicant articulated that an alibi was a defense used to show that he was not present when the crime occurred. He admitted this was a layman's term. Applicant further admitted that apparently the jury did not believe his testimony at trial as he was convicted of these crimes.

Counsel testified he met with Applicant four times, with the last meeting being the longest and the most thorough in preparation for trial. At this meeting, Counsel stated he explained his trial strategy to Applicant. Counsel also testified he was adequately prepared for trial. He also stated he attempt to located Ms. Retzer, but did not subpoena or interview her. Moreover, Counsel testified he believed Ms. Setzer's testimony would have been more favorable to the State as she was a co-defendant's girlfriend. This co-defendant testified against Applicant at trial.



Counsel testified he presented six (6) alibi witnesses at trial on Applicant's behalf. He stated the alibi defense was the only defense Applicant had. Counsel further testified the evidence against Applicant at trial included the video tape, which showed a person which very closely resembled Applicant and both co-defendant's statements and testimonies at trial which implicated Applicant. Counsel did, however, admit that he did not request an alibi charge in this case, nor did the trial judge give the jury an alibi charge.

On cross-examination and re-direct examination, Counsel admitted the jury understood what an alibi defense is, but may have understood better with an alibi charge.

Both Christian Hope and Kendra Gordon testified they met with Counsel briefly before trial to discuss their testimony as alibi witnesses.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court also has read the trial transcript, all of which assists the Court in judging their credibility.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

#### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

*Failure to Interview/Call witnesses on the Applicant's behalf*

The Applicant alleges Counsel was ineffective for failing to subpoena witnesses on his behalf, specifically Tara Retzer.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of

a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

This Court finds Counsel was not ineffective for failing to interview or subpoena witnesses on Applicant's behalf. Applicant failed to produce any testimony or evidence at the PCR hearing to show what these witnesses would have testified to at trial or how their testimony would have altered the outcome of his trial. Additionally, Applicant has failed to prove any resulting prejudice from Counsel's alleged shortcoming. Accordingly, this allegation is denied.

*Failure to request an alibi jury instruction*

This Court finds Counsel may have been ineffective for failing to ensure that an alibi instruction was given to the jury and thus, his conduct fell below the reasonable professional standard. This Court finds that, had a jury instruction on alibi been requested, the trial court would have been required to deliver such a charge because it was supported by evidence presented at trial. See State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) (trial court must give requested charge if it is supported by evidence). However, this Court finds that the Applicant has not proven that he suffered prejudice from the lack of an alibi charge. Alibi testimony was presented to the jury, and both attorneys discussed the issue in their closing arguments. The trial court charged the jury that the State had the burden of proof to prove each and every element of each offense beyond a reasonable doubt, and that a defendant is presumed innocent of each and every offense. Importantly, the trial court also specifically charged the jury that:

Mr. Hope, like anyone charged with any offense in our system is presumed innocent



on each of these charges...The presumption of innocence in Mr. Hope's favor is removed from him if and when and only if and when you as the trial jury in this case determine that the State has proven his guilt beyond a reasonable doubt. (Tr. p. 264 lines 7-9; 19-23).

As judges of the facts you of necessity must judge the credibility, that is the believability, of the witnesses who have testified. (Tr. p. 266 lines 20-22).

You can look at the consistencies or inconsistencies of their testimony as given here in court or as compared with testimony or statements at an earlier time... And you can look at any bias or prejudice, that is whether a witness would wish to help or hurt one side or the other. (Tr. p. 267 lines 3-6; 8-10).

What you should do in this case is weigh all of the evidence in the case and after doing so if you are not convinced of Mr. Hope's guilt beyond a reasonable doubt you would find him not guilty. (Tr. p. 268 lines 7-11).

In order to prove [armed robbery] the State must prove beyond a reasonable doubt first that Mr. Hope or his accomplices, if applying [accomplice liability], took personal property and money is personal property from the person or presence of another person. (Tr. p. 269 lines 6-12).

The State must prove beyond a reasonable doubt that Mr. Hope or his accomplices carried the property away intending to permanently deprive the owner of the property and keep the property for his own use. (Tr. p. 269 lines 18-22).

Finally, the State must prove beyond a reasonable doubt that Mr. Hope or an accomplice was armed with a deadly weapon during the robbery. (Tr. p. 270 lines 5-7).

Now the State must prove these elements beyond a reasonable doubt before you could convict Mr. Hope of armed robbery. (Tr. p. lines 11-13).

The State here must prove beyond a reasonable doubt that Mr. Hope knowingly and unlawfully seized, confined, kidnapped, or kidnapped another person without authority of law. (Tr. p. 270 lines 15-18).

And again the State must prove those elements beyond a reasonable doubt before you could convict Mr. Hope of kidnapping. (Tr. p. 271 lines 14-16).

Here the State must prove beyond a reasonable doubt that Mr. Hope or his accomplices, if there were any, possessed a firearm or visibly displayed what appeared to be a firearm during the commission of a violent crime. (Tr. p. 271 line 24- p. 272 line 3).

The State must prove beyond a reasonable doubt as to [criminal conspiracy] that he Mr. Hope combined with one or more persons for the act, for the purpose I'm sorry of committing an unlawful act or committing a lawful act by unlawful means. (Tr. p. 272 lines 19-23).

In order to convict Mr. Hope of conspiracy the State must prove beyond a reasonable doubt that Mr. Hope knew of the unlawful conduct and that he agreed to combine with the other individuals for the purpose of accomplishing the unlawful



conduct. (Tr. p. 273 line 24- p. 273 line 3).

This Court finds that this charge was sufficient to inform the jury that the State had to prove beyond a reasonable doubt that Mr. Hope was not at home at the time of the crime, and that he was, in fact, at the scene of the crime and committed the crime. In addition, in this particular case, because the jurors could believe *either* the State's identification witnesses (co-defendants), *or* they could believe the alibi witnesses, *but not both*, this Court finds that the crucial issue in this case was credibility. Witness credibility was argued by both sides and was thoroughly charged to the jury.

This Court finds that the case of Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994), supports the notion that even where counsel is ineffective for failing to ensure an alibi charge is given, there is a lack of the required prejudice if there is not a reasonable probability that the outcome of trial would have been different had an alibi charge been given. In the Ford case, the Supreme Court noted that the evidence was both direct and circumstantial, as it was in Mr. Hope's case. This Court further finds that the case of Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995), is distinguishable because the evidence in that case was wholly circumstantial, and because the solicitor implied in closing argument that the defense bore some burden of proof on the issue of alibi. The Supreme Court found that an alibi charge was particularly critical in that case for those reasons. Roseboro, *supra*, at 295, 454 S.E.2d at 313-14. Finally, this Court finds the case similar to that of Gibbs v. State, Op. No. 27253 (S.C. Supreme Court filed May 15, 2013). In Gibbs, the South Carolina Supreme Court held, while Counsel was deficient for failing to request an alibi defense charge, the jury instructions as a whole supported the finding of no resulting prejudice. Specifically, the Court held that because the jury charge clearly required the State to prove its case beyond a reasonable



doubt, the PCR court's finding of no prejudice must be sustained under the any evidence standard of review. This Court finds the Gibbs case on point with Applicant's case. Clearly, the trial court emphasized the State burden of proving Applicant's guilty beyond a reasonable doubt. Additionally, Applicant testified he knew exactly what an alibi witness was and gave an accurate definition of such. This Court also finds "alibi" is a layman's concept in addition to a legal one and the defense of not being at the scene of the crime was clearly presented to the jury. Absent any evidence to the contrary, this Court concludes that Applicant's alibi witness testimony must have been given little or no weight by the jury and therefore is not convinced that an alibi charge request by Counsel would have affected the outcome of Applicant's trial. Accordingly, this allegation is dismissed.

#### *Other allegations*

While the Applicant alleged in his application and at the evidentiary hearing that Counsel was ineffective for failing to prepare and investigate this case, failure to make a motion to suppress the evidence, failing to challenge a striking of the jury panel and ineffective assistance of appellate counsel, this Court finds Applicant failed to meet his burden of proving Counsel's ineffectiveness. Specifically, Applicant failed to produce evidence sufficient to show how the trial's outcome would have been different had Counsel objected or challenged the above issues or that appellate counsel was deficient. Applicant also failed to show how these alleged deficiencies prejudiced his trial. Therefore, these allegations are denied.

#### **CONCLUSION**

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED!**



Edgar W. Dickson  
Presiding Circuit Court Judge  
Sixteenth Judicial Circuit

8/20, 2013

Orangelay, South Carolina

