No. 19-1463

In The Supreme Court of the United States

IN THE MATTER OF THE ESTATE OF ZONA MAE OLIVER, DECEASED,
SANDRA JEAN OLIVER AND JAMES HOWARD OLIVER
Petitioners,

v.

JAMES C. OLIVER, JR, TERRY MICHAEL CARNEY, JR., MELISSA M. CARNEY,
JANET O. MCLELLAND AND JAMES DONALD OLIVER,
Respondents,

On Petition For Writ Of Certiorari To The Mississippi Court Of Appeals

PETITION FOR REHEARING

Sandra J. Oliver, Pro Se Petitioner
P. O. Box 593
New Smyrna Beach, Fl. 32170
386-216-3311
sandrafromflorida@gmail.com

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

PETITION FOR REHEARING 1

CONCLUSION 7-8

CERTIFICATE OF COMPLIANCE 9

TABLE OF AUTHORITIES

Page

CASES

Andre v. Morrow, 106 Idaho 455, 680 P.2d 1355 (Idaho 1984).....6

Barker v. Barker, 94 N.M. 162, 608 P.2d 138 (1980).....7

Carter v. Fenner, 136 F.3d 1000, (5th Cir. 1998).....4

Epstein v. Chatham Park, Inc., 153 A.2d 180 (Del.Sup.Ct. 1959).....7

Hanshew v. Mullins, 385 S.W.2d 186 (Ky. 1964).....7

Gelb v. Royal Globe Insurance, 798 F.2d 38, (2d Cir. 1986).....1, 3-4

Griffin v. Griffin, 327 U.S. 220, 66 S. Ct. 556, 90 L. Ed. 635 (1946).....7

Hicks v. Quaker Oats Co., 662 F.2d 1158, 1168 (5th Cir. 1981).....3

Hines v. Clendenning, 465 P.2d 460 (Okl. 1970).....7

In re Marriage of Quenzer, 42 Or.App. 3, 599 P.2d 1217 (1979).....7

International Refugee Organization v. Republic S.S. Corp., 189 F.2d 858, 862 (4th Cir. 1951) 4

Ladner v Logan, 857 So.2d. 764, 770 (Miss 2003),.....1,5

Martin v. Henley, 452 F.2d 295, 300 (9th Cir. 1971).....4

Moran Towing Transportation Co. v. Navigazione Libera Triestina, S.A., 92 F.2d 37, 40 (2d Cir.), *cert.* 4

Murphy v. Murphy, 581 P.2d 489 (Okl.Ct.App. 1978).....7

National Equipment Rental, Ltd. v. Taylor, 225 Kan. 58, 587 P.2d 870 (1978).....7

Nemaizer v. Baker, 793 F.2d 58, 65 (C.A.2 1986).....7

Restatement (Second) of Conflict of Laws § 92 (1971).....7

Stebbins v. Keystone Insurance Co., 481 F.2d 501, 507 n. 13 (D.C.Cir. 1973).....3

Stevens v. Stevens, 44 Colo.App. 252, 611 P.2d 590 (1980).....7

Sierra Life Insurance Co. v. Granata, 99 Idaho 624, 586 P.2d 1068 (1978).....7

Thorley v. Superior Court, 78 Cal.App.3d 900, 144 Cal.Rptr. 557 (1978).....6-7

United States v. 119.67 Acres of Land, 663 F.2d 1328, 1331 (5th Cir. 1981).....5

Wilmer v. Board of County Comm'rs, 69 F.3d 406, 409 (10th Cir. 1995).....5

STATUTES AND RULES

Rule 60, Rule 60 (b), Rule 60(b)(4).....*passim*

PETITION FOR REHEARING

Pursuant to Sup. Ct. R. 44.2, Petitioner Sandra Jean Oliver, ("Petitioner" or "Sandra") respectfully petitions this Court for an order (1) granting rehearing, (2) vacating the Court's October 5th, 2020 order denying certiorari, (3) disposing of these cases by granting the petition for writ of certiorari, vacating all judgments, and remanding all three cases back to a different county in circuit court where all of the void judgments and fraud upon the court can be fairly addressed bringing them all back to their original state and then consolidate them. These deserve reconsideration since there are four void orders that have no choice but to be vacated pursuant to Rule 60(b) (4) that have not been addressed by any court as they were discovered while preparing the briefs for Appeal and in light of *Ladner v Logan*, 857 So.2d. 764, 770 (Miss 2003) and *Gelb v. Royal Globe Insurance*, 798 F.2d 38, (2d Cir. 1986), as similar issues have been ruled on by this Court and others obtaining a different ruling and warrants a rehearing.

Issues never addressed by a court, even if they were before a court and the court ignored them, they are still appealable issues as was the case and in light of *Gelb v. Royal Globe Insurance*, 798 F.2d 38, (2d Cir. 1986). Also in light of the newly discovered two (2) other orders that need to be vacated since they were obtained by fraud and false statement put upon the court, these too should give cause for granting this rehearing. These "constitute circumstances of a substantial and controlling effect or other substantial ground not previously presented" sufficient to warrant rehearing of the order denying certiorari in Sandra Oliver's case.

Initially the appeal stemmed from numerous violations in due process rights that prevented Sandra from being before a fair tribunal which do still including four void orders that should be vacated as they were obtained without jurisdiction over Sandra and have been ignored and never addressed by any court plus the fact that the Appeals Court Opinion requesting to be set aside is chalked full of errors, misstatements, omissions and incorrect application of facts and the horrific fact that the Opinion itself provided all of the case law and argument on behalf of the Respondents in total violation of all precedent, but it is the four void orders never before addressed and the two newly discovered orders that were obtained based on false information discovered while preparing the briefs during the appeal process that Sandra request this rehearing and the continued fact that the lower court will never allow Sandra to have a fair trial as evidenced by all of its rulings and denials in due process which continue today and most recently as October 23, 2020.

Before realizing Sandra could file this petition for rehearing, Sandra filed, on October 12, 2020 motion requesting the four void orders to be vacated in the lower court and in line with all of the rulings in the lower court denying Sandra's due process rights over the past five years, this court already denied them on October 23, 2020 and sanctioned Sandra $1000.00 claiming she was trying to re-litigate the cases and ruled on this three days after the Respondents filed their response on October 20, 2020 not even giving Sandra time to receive their response in the mail. Respondents ***have already filed*** a motion to dismiss the Fraud case and requested sanctions against Sandra which this chancellor will give them as is another way to

punish Sandra for whatever reason, except for never giving up the fight for the right to testify before a fair tribunal and be heard and present evidence and give this rehearing more of an urgency to mandate justice.

These orders that were before this Court, before the Mississippi Supreme and Appeals court, but never addressed consist of two "non-agreed" orders knowingly entered without jurisdiction over Sandra. {60(b)(4)} and two Ex Parte orders entered without notice of hearing so without jurisdiction over Sandra. The newly discovered facts showing fraud and false upon the Court, *by the Court* and opposing counsel and his "expert" bankruptcy witness' affidavit also need vacating which were the Sustaining of Motion in Limine (03/2015) based on FALSE CLAIM that Petitioner James Howard Oliver was listed as a creditor in his brother and Respondent, James Calvin Oliver, Jr.'s bankruptcy case and this Chancellor then denied all rights from then on saying all debts owed to him were discharged. The dismissal of the Estate Case was also based on false claim of James Howard Oliver being creditor and FALSE claim of res judicata.

The fact that the four void orders have never been addressed by any court even throughout this appeals process and now the two newly discovered ones, makes them still appealable issues and the lower court cannot say Sandra is trying to re-litigate the issues. In *Gelb v. Royal Globe Insurance*, 798 F.2d 38, (2d Cir. 1986), the possibility that a losing litigant might not seek appellate review on one of the grounds because the other is clearly decided correctly is thought insufficient to allow relitigation. **However**, if an appeal is taken and the appellate court affirms

on one ground and disregards the other, there is no collateral estoppel as to the unreviewed ground. *See Hicks v. Quaker Oats Co.,* 662 F.2d 1158, 1168 (5th Cir. 1981); *Stebbins v. Keystone Insurance Co.,* 481 F.2d 501, 507 n. 13 (D.C.Cir. 1973); *Martin v. Henley,* 452 F.2d 295, 300 (9th Cir. 1971); *International Refugee Organization v. Republic S.S. Corp.,* 189 F.2d 858, 862 (4th Cir. 1951); *Moran Towing Transportation Co. v. Navigazione Libera Triestina, S.A.,* 92 F.2d 37, 40 (2d Cir.), *cert. denied,* 302 U.S. 744, 58 S.Ct. 145, 82 L.Ed.2d 855 (1937). Since Gelb did not receive effective appellate review of whether he caused the Franklin Place fire, collateral estoppel does not apply to bar relitigation of this issue. Therefore, the District Court's granting of Royal's motion for summary judgment on its counterclaim was reversed and the case is remanded for a trial of this counterclaim and so the judgment of the District Court was affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. These should give cause to grant this rehearing as this Court too never addressed the void orders even though they were before it and key right now in granting this petition is the fact Chancellor Daniels continues to abuse the law as ruled denying Sandra's motions filed three days and sanctioned her on top of that $1000.00 for fighting for justice which has been exactly what has happened ever since she took over the case in 2015.

Numerous rulings by this Court and courts all over the country set aside void orders every day and most say this is a rare occurrence, but not here with Sandra's case and certainly constitutes rulings in direct conflict with this Court's previous

rulings and grave injustice. As taken directly from *Carter v. Fenner*, 136 F.3d 1000, (5th Cir. 1998)This court is not often confronted with Rule 60(b)(4) review of a final judgement and has considered the application of Rule 60(b)(4) in the consent judgement context only in the rarest and most tangential of circumstances. See *United States v. 119.67 Acres of Land*, 663 F.2d 1328, 1331 (5th Cir. 1981) (Unit A) (interpreting a Rule 60(b) motion to set aside a consent judgement as one for relief under 60(b)(4) because "[a] judgement is not void simply because it is erroneous, but only where the rendering court lacked subject matter jurisdiction or acted in a manner inconsistent with due process of law"). We therefore look not only to our own precedent, but to the law of our sister circuits in determining our standard of review. Such sources indicate that we review the district court's ruling on a Rule 60(b)(4) motion de novo. See, e.g., *Wilmer v. Board of County Comm'rs*, 69 F.3d 406, 409 (10th Cir. 1995). This circuit has stated that Typically, "[m]otions under Rule 60(b) are directed to the sound discretion of the district court, and its denial of relief upon such motion will be set aside on appeal only for abuse of that discretion." *Seven Elves v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. 1981). When, however, the motion is based on a void judgement under rule 60(b)(4), the district court has no discretion, the judgement is either void or it is not. So how can the lower court here in Sandra's case deny the motions and abuse its power and discretion without being made to correct the facts? Granting this rehearing is imperative to correct these injustices and Sandra now too has to file to have these two new ones vacated.

Almost identical to this case at hand, as noted in *Ladner v Logan*, 857 So.2d. 764, 770 (Miss 2003), an **agreed judgment** was signed on May 14, 1998, and filed on May 26, 1998, signed by counsel for Cheryl and former counsel for Woodrow, stating that Woodrow was $39,696 in arrears. With new counsel, Woodrow filed on December 28, 1998, a motion for relief from the May 14, 1998, agreed judgment **on the bases that he was not aware of the agreed judgment nor did he authorize his former counsel to execute the judgment.** Woodrow was clearly denied his constitutional due process rights and opportunity to defend, and the judgment issued is therefore void. An order was entered July 28, 1999, setting aside and cancelling the December 19, 1996, judgment and May 14, 1998, agreed judgment.

Had this Court or any of the courts addressed these orders put before them, they would have seen that the judgements issued in Sandra's case are not valid and deserve no respect or credit and must be vacated. As noted in *Andre v. Morrow*, 106 Idaho 455, 680 P.2d 1355 (Idaho 1984).....a valid judgment itself consists of several factors as follows:

> First, a valid judgment must have been rendered by a court of competent subject matter jurisdiction, and either jurisdiction over the person or persons whose rights are to be adjudicated, or over the res if the judgment purports to adjudicate interest in a tangible thing. *Thorley v. Superior Court*, 78 Cal.App.3d 900, 144 Cal.Rptr. 557 (1978); *Stevens v. Stevens*, 44 Colo.App. 252, 611 P.2d 590 (1980); *Sierra Life Insurance Co. v. Granata*, 99 Idaho 624, 586 P.2d 1068 (1978); *National Equipment Rental, Ltd. v. Taylor*, 225 Kan. 58, 587

P.2d 870 (1978); Restatement (Second) of Conflict of Laws § 92 (1971); 50 C.J.S. *Judgments* § 889 c. (1947).

Second, a valid judgment must be rendered in compliance with the constitutional requirements of due process. *Griffin v. Griffin*, 327 U.S. 220, 66 S.Ct. 556, 90 L.Ed. 635 (1946); *Thorley v. Superior Court, supra; Barker v. Barker*, 94 N.M. 162, 608 P.2d 138 (1980); *Hines v. Clendenning*, 465 P.2d 460 (Okl. 1970); Restatement (Second) of Conflict of Laws § 92 (1971).

Third, a valid judgment is one that is in compliance with the rendering state's requirements for the valid exercise of its power. *Comfort v. Comfort*, 17 Cal.2d 736, 112 P.2d 259 (1941); *Epstein v. Chatham Park, Inc.*, 153 A.2d 180 (Del.Sup.Ct. 1959); *Hanshew v. Mullins*, 385 S.W.2d 186 (Ky. 1964); *Murphy v. Murphy*, 581 P.2d 489 (Okl.Ct.App. 1978); *In re Marriage of Quenzer Quenzer*, 42 Or.App. 3, 599 P.2d 1217 (1979); Restatement (Second) of Conflict of Laws § 92 comment j (1971).

CONCLUSION

For the foregoing reasons, Petitioner Sandra J. Oliver prays that this Court (1) grant rehearing, (2) vacate the Court's October 5th, 2020 order denying certiorari, (3) dispose of these cases by granting the petition for writ of certiorari, vacating all judgments, and remanding all three cases back to a different county in circuit court where all of void judgments and fraud upon the court can be fairly addressed bringing all cases back to the beginning and consolidate them, all in light of *Gelb v. Royal Globe Insurance*, 798 F.2d 38, (2d Cir. 1986), *Ladner v Logan*, 857 So.2d. 764, 770 (Miss 2003) and the dozens of cases rendered by this Court and courts all over the country who rulings are in direct conflict and have been appropriately vacated in accordance with the law.

Respectfully, if this Rehearing is not granted, Sandra will literally be back in the court of appeals within a few months with these exact issues and then back before this Honorable Court as *this* lower court in Montgomery County, Mississippi will continue to abuse its discretion and usurp the law if not ever held accountable as it has done from day one with Sandra in these cases including just recently again on October 23, 2020 denying Sandra's right to have the four (4) *absolute* void orders set aside. Chancellor Daniels signed two of them ex parte in violation of Rule 5 and entered two of them fully knowing they were not agreed orders so she had no jurisdiction over Sandra when any of them were ordered in violation of Rule 60(b)(4) that clearly states the court has no discretion but to set them aside, yet she denied them? How is Sandra supposed to get justice if this Court will not address the same issues as it has with others having the same legal errors when the lower court clearly has no intention of following the rules of civil procedure?

Respectfully submitted this the 30th day of October, 2020

Sandra J. Oliver (Pro Se) Petitioner
P. O. Box 593
New Smyrna Beach, Fl. 32170
386-216-3311
sandrafromflorida@gmail.com

No. 19-1463

In The Supreme Court of the United States

IN THE MATTER OF THE ESTATE OF ZONA MAE OLIVER, DECEASED,
SANDRA JEAN OLIVER AND JAMES HOWARD OLIVER
Petitioners,

v.

JAMES C. OLIVER, JR, TERRY MICHAEL CARNEY, JR., MELISSA M. CARNEY,
JANET O. MCLELLAND AND JAMES DONALD OLIVER,
Respondents,

On Petition For Writ Of Certiorari To The Mississippi Court Of Appeals

CERTIFICATE OF COMPLIANCE

As Pro Se Petitioner, I certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

Sandra J. Oliver, Pro Se Petitioner
P. O. Box 593
New Smyrna Beach, Fl. 32170
386-216-3311
sandrafromflorida@gmail.com