

No. 22-5618

IN THE SUPREME COURT OF THE UNITED STATES

Ronald J. Brooking
Petitioner

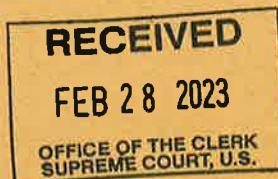
v.

Prince George's County Maryland
Respondent

On Petition for Writ of Certiorari to the
Supreme Court of the United States

PETITION FOR REHEARING

Ronald J. Brooking
Pro Se' Petitioner
5954 South Hil Mar Circle
District Heights, Maryland 20747
Rbrooking40@comcast.net
(240)422-7783



QUESTIONS PRESENTED

1. Should issues, of substantial effect, that are presented in, Petitioner's Petition for Rehearing, be considered by the Supreme Court of the United States in its Order dated January 9, 2023 opposite of the Court of Appeals Opinion in McDonough Power Equipment v. Greenwood 464 U.S. 548 (1984) Resulting in Granting the Writ of Certiorari, Vacating the Order, and Remanding to Circuit Court for a new trial?
2. Should the Court of Appeals, and Court of Special Appeals have followed legal precedence in the United States Supreme Court opinion in United States v. United States Gypsum Co., 438 U.S. 422 (1978) opinion, and applied the Erroneous Standard Statute in Federal Rule of Civil Procedure 52(a) to Petitioners appeal, and weigh Federal Rule of Civil Procedure Rule 61(a), Harmless Standard Statute to Petitioner's Appeal?

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
STATUTORY PROVISIONS INVOLVED.....	iv
PETITION FOR REHEARING.....	1
REASONS FOR GRANTING REHEARING.....	2
I. The Supreme Court of the United States opinion conflicts with the Court of Appeals in McDonough Power Equipment v. Greenwood 464 United States 548 (1984).....	3
II. The application of Federal Rule of Civil Procedure 52(a) Clearly Erroneous Standard must be, respectfully applied to Petitioner's Petition for Rehearing.....	4
III. The Court of Special Appeals rendered an Opinion based on an issue not proposed, or briefed by either party.....	5
IV. <u>ERROR IN THE APPLICATION OF FUNDAMENTAL LAW</u>	
<u>PROCEDURAL DEFAULT</u>	
V. Petitioner's Petition for Rehearing is a Review Worthy Issue.....	6
VI. CONCLUSION.....	7
VII. CERTIFICATION OF UN-REPRESENTED PETITIONER.....	8
VIII. CERTIFICATION OF WORD COUNT.....	9
IX. APPENDICES TABLE OF CONTENTS.....	10

TABLE OF AUTHORITIES

Cases

1. McDonough Power Equipment Co., Inc v. Greenwood, 464 U.S. 548.
2. Silber v. United States 370 U.S. 717 (1962).
3. Tellibus, inc. v. Major Issues & Rights ,Ltd., 551 U.S. 308 (2007).
4. United States v. United States Gypsum Co. ET AL. 438 U.S. 422 (1978)

STATUTORY PROVISIONS INVOLVED

1. Federal Rule of Civil Procedure Rule 44
2. Federal Rule of Procedure Rule 52(a)
3. Federal Rule of Civil Procedure Rule 61

1.

PETITION FOR REHEARING

**Justice Robert H. Jackson observed once of the Supreme Court :
“We are not final, because we are infallible, but we are infallible only
because we are final.”**

Petitioner, Ronald J. Brooking, does, hereby present to the Supreme Court of the United States, it's Petition for Rehearing of the Denial of Petition for Writ of Certiorari in its Order dated January 9, 2023 in good faith, and not for delay, and Petitions for Rehearing to this High, and Honorable Court.

2., I, & II
REASONS FOR GRANTING THE PETITION

This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial..... effect." On January 9, 2023, the Supreme Court of the United States issued an order in Ronald J. Brooking, Petitioner, v. Prince Georges's County Maryland, Respondent, No 22-5618. The Court of Appeals, as well as the Court of Special Appeals intervening decision deepens the lower Court conflict described in Brooking's previously filed Petition for Writ of Certiorari in this Court. The Supreme Court held in its opinion in McDonough Power Equipment Co., Inc v. Greenwood 464 U.S. 548 (1984), that the Court of Appeals' standard is contrary to the practical necessities of judicial management reflected in Federal Rule of Civil Procedure 61, and the harmless error statute. This contradiction applied in the Court of Appeals, as well as the Court of Special Appeals in its renderance of its order and opinion for Petitioner's appeal. The harmless error in Rule 61 applies only when defects do not affect any party's substantial rights. The resulting opinion within the Supreme Court, in McDonough v. Greenwood rendered a reversal of the appellate Court's opinion.

The intervening decision of the Court of Appeals, and the Court of Special Appeals deepens further in Federal Rule 52(a) in the clearly erroneous standard. The clearly erroneous standard is an applicable standard used in review in civil appellate proceedings.

United States v. United States Gypsum Co. ET AL. 438 U.S. 422 (1978)

Appeals courts apply the *clearly erroneous* standard of review to a conclusion of fact made by a judge. That means the court will only overturn the conclusion if the court finds it to be clearly wrong. This standard is nearly the same degree of deference as is afforded in the "reasonableness" standard, but it is slightly higher, meaning an appeals court will have to find a slightly greater degree of wrongness in the conclusion in order to overturn it.

A finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.

Upon the findings of, clearly erroneous standard of review in an appeal, the determination in the appellate Courts may reverse its findings in its rendered opinion, or order.

The application of the Federal of Civil Procedure 52(a), in its applicable stance, must, respectfully, Petitioner prays, must be applied to Petitioner's Petition for Rehearing in the Denial of Petitioner's Writ of Certiorari.

The Court of Special Appeals opinion is clearly contrary to the Supreme Courts held, rendered, opinion in McDonough Power Equipment Co., Inc v. Greenwood 464 U.S. 548 (1984),, and clearly established Federal Law in Rule 52(a), and Rule 61.

III

THE COURT OF SPECIAL APPEALS RENDERED AN OPINION BASED ON AN ISSUE NOT PROPOSED OR BRIEFED BY EITHER PARTY.

In the unreported opinion rendered by The Court of Special Appeals on April 5, 2022, page two (2) of its opinion, it states, "Here, Mr. Brookings brief does not challenge the courts alternative grounds for dismissing his complaint. And because a complaint may be dismissed for either failing to provide notice under LGTCA or for failing to state a claim upon which relief can be granted, the courts reliance on those grounds to dismiss the complaint, served as an adequate, and independent basis for its ruling. Consequently, we shall affirm the judgment of the Circuit Court."

In the above underlined, in the Court of Special Appeals opinion page two (2), claim upon which relief can be granted, the Respondent did not address in its brief, or opposition thereto of Petitioner not stating a claim upon which relief can be granted.

Md. R. Rev. Ct. App. & Spec. App. 8-131

(a) Generally. The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.(b) In Court of Appeals--Additional Limitations.(1) *Prior Appellate Decision.* Unless otherwise provided by the order granting the writ of certiorari, in reviewing a decision rendered by the Court of Special Appeals or by a circuit court acting in an appellate capacity, the Court of Appeals ordinarily will consider only an issue that has been raised in the petition for certiorari or any cross-petition and that has been preserved for review by the Court of Appeals. Whenever an issue raised in a petition for certiorari or a cross-petition involves, either expressly or implicitly, the assertion that the trial court committed error, the Court of Appeals may consider whether the error was harmless or non-prejudicial even though the matter of harm or prejudice was not raised in the petition or in a cross-petition.

IV.

ERROR IN THE APPLICATION OF FUNDAMENTAL LAW
PROCEDURAL DEFAULT

In reviewing an appeal, prior to the Court of Special Appeals rendering of its opinion, in a matter, which will be contained in, and decision made in that opinion which is not in the record, there must be a request by the Court of Special to present supplemental briefing on the matter, prior to its rendering of said opinion.

A request by the Court of Appeals to the Petitioner, and Respondent was not in place prior to its opinion rendered on April 5, 2022. The Court of Special Appeals included in its decision in its unreported opinion, a reliance on a matter never brought to the attention of the Circuit Court, or Court of Special Appeals.

The Court of Special Appeals incorrect finding, to which it relied on in its opinion, is of procedural default. Petitioner trusts in the mechanics of the judicial process to review and correct this procedural default, and grant Petitioner's Petition for Rehearing to address this matter.

V

PETITIONER'S PETITION
FOR REHEARING
IS A
REVIEW WORTHY ISSUE

The decision, in the opinion of the Court of Special Appeals, is inconsistent with the Supreme Court's authority.

Petition for Rehearing's intent, is to bring to the Court issues of substantial effect not addressed in a previous petition worthy of rehearing. When important questions of law, that can not be questioned, are not up for questioning, in its application of error in an Appellate Court, that substantially affect the rights of the Petitioner, requested relief, in the form of a Petition for Rehearing is proper, and A Review Worthy Issue. Decisions in an Appellate Court contrary to held and rendered opinions in the Supreme Court in cases of similarity, that are contrary in its decision to the Supreme Court's authority, the Petition for Rehearing, is a Review Worthy Issues

IMPORTANT QUESTIONS OF LAW
REQUIRES AN ANSWER
THAT IS IN ALIGNMENT WITH
THE WRITTEN LAW
LEST IN THE
DEPRIVATION OF RIGHTS
TO ALL

The application of law, must, in its rendering, must not be contrary to clearly established Federal Law. When substantial errors in an opinion by the Court of Appeals that affect the rights of a Petitioner are brought to the attention of the Court of the non application of the Erroneous Standard Review Rule, the Petition for Rehearing, is a Review Worthy Issue.

Petitioner respectfully, and humbly states, Entitlement to Rehearing is proper, and appropriate, when an opinion's decision is based on an unbriefed issue, not requesting by Petitioner, and Respondent of supplemental briefing of the issue at hand, by the Court of Special Appeals, which will be, in its rendering a important

crucial, and substantial effect of its decision made in the opinion, the Petition for Rehearing must, respectfully be granted, and is a Review Worthy Issue.

**THE APPLICATION OF LAW IN ITS
JUDICIAL GOVERNANCE
IS A REVIEW WORTHY ISSUE**

VI
CONCLUSION

As to the aforementioned reasons in Petitioner's Petition for Rehearing for the Denial of Writ of Certiorari, the Petitioner requests the granting of the Petition of Rehearing.

Respectfully Submitted,

Ronald J. Brooking
Pro Se' Petitioner
5954 South Hil Mar Circle
District Heights, Maryland 20747
Rbrooking40@comcast.net
(240)422-7783

No. 22-5618

IN THE SUPREME COURT OF THE UNITED STATES

Ronald J. Brooking

Petitioner

v.

Prince George's County Maryland

Respondent

CERTIFICATION OF UN-REPRESENTED PETITIONER

Pursuant to 44.1 of the Rules of this Court, I, Ronald J. Brooking, do hereby certify that Petitioner is by and through Pro Se' representation, and that this Certification of Pro Se' representation is presented in Good Faith, and not for delay to this Honorable Court.

I declare under penalty of perjury, that the foregoing is true and correct.

Dated this 3rd. Day of February 2023

Respectfully Submitted,

Ronald J. Brooking

Pro Se' Petitioner

5954 South Hil Mar Circle

District Heights, Maryland 20747

Rbrooking40@comcast.net

(240)422-7783

No. 22-5618

IN THE SUPREME COURT OF THE UNITED STATES

Ronald J. Brooking
Petitioner

v.
Prince George's County Maryland
Respondent

CERTIFICATION OF WORD COUNT

Pursuant to 33.1(h) of the Rules of this Court, I certify that the accompanying Petition for Rehearing of the Denial of Writ of Certiorari, which was prepared using Century Schoolbook, with 12 point typeface, contains 2442 words, excluding the parts, of the document that are exempted by Rule 33.1(d). This certification was prepared in reliance on the word-count function of the word-processing system (Microsoft Word) used to prepare the document.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 3rd day of February 2023.

Respectfully Submitted,

Ronald J. Brooking
Pro Se' Petitioner
5954 South Hil Mar Circle
District Heights, Maryland 20747
Rbrooking40@comcast.net
(240)422-7783

IN THE SUPREME COURT OF THE UNITED STATES

Ronald J. Brooking

Petitioner

v.

Prince George's County Maryland

Respondent

CERTIFICATE OF SERVICE

I, Ronald J. Brooking Pro Se' Petitioner, hereby certify that on this 3rd day of February 2023, I caused 1 copy of Petitioner's Petition for Rehearing of Denial of Writ of Certiorari to be served by United States Postal Service Priority mail to the following counsel and Solicitor General below:

Attorney Dawn Barnett
Prince George's County Government
Office of Law
1301 McCormick Drive Suite #4100
Largo, Maryland 20774
Attorney for the Respondent

Solicitor General of The United States Department of Justice
950 Pennsylvania Avenue N. W. Room 5614
Washington, D.C. 20530-0001
Solicitor General for the United States Department of Justice

I further certify that all parties required to be served, have been served.
Ronald J. Brooking

Pro Se' Petitioner
5954 South Hill Mar Circle
District Heights, Maryland 20747
Rbrooking40@comcast.net
(240)422-7783

IX.
APPENDIX
OF THE
TABLE OF CONTENTS

APPENDIX A - January 9, 2023, Order, from the Supreme Court of the United States, Ronald J. Brooking v. Prince George's County Maryland.

APPENDIX A

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

January 9, 2023

Mr. Ronald J. Brooking 5954 South
Hil Mar Circle District Heights MD
20747

Re: Ronald J. Brooking
v Prince George's County, Maryland
No. 22-5618

Scott S. Harris Clerk of the
Court (202) 479-3011

Dear Mr. Brooking:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied

Sincerely

Scott S. Harris Clerk

