

Order

Michigan Supreme Court
Lansing, Michigan

April 5, 2013

Robert P. Young, Jr.,
Chief Justice

144740

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 144740
COA: 306579
Washtenaw CC: 05-001189-FH

DAVID KIRCHER,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the December 16, 2011 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D).

MARKMAN, J. (*concurring*).

A five-year prison sentence was imposed on this 66-year-old defendant, an apartment building owner, who when the bottom floor of his building flooded with sewage, and under what he viewed as emergency circumstances, pumped that sewage into a catch basin that ultimately led to the Huron River. Although what defendant did was clearly wrong and in violation of the law, I continue to question (as did two other justices when this case was originally before the Court) whether the Legislature in enacting MCL 324.3115(4) imposed what the lower courts viewed as a *mandatory* five-year prison sentence. See *People v Kircher*, 483 Mich 986 (2009) (MARKMAN, J., dissenting). However, because this is a motion for relief from judgment and this issue has already been decided against defendant and he has not established “good cause” for previously failing to raise his new issues, I concur that he is not entitled to relief under MCR 6.508(D).



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 5, 2013

Corbin R. Davis

Clerk