

[Cite as *State v. Oliver*, 2011-Ohio-3950.]

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

KEVIN OLIVER, II

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. 11CAA020021

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Delaware County Court of  
Common Pleas, Case No. 09 CR I 09 0450

JUDGMENT:

Reversed and Final Judgment Entered

DATE OF JUDGMENT ENTRY:

August 8, 2011

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Hoffman, P.J.*

{¶1} Defendant-appellant Kevin Oliver, II appeals the sentence entered by the Delaware County Court of Common Pleas, following his guilty plea to six counts of burglary, two counts of attempted burglary, and one count of grand theft. Appellant was ordered to serve a total of nine and one half years in prison in addition to other penalties. The trial court included the following in its Judgment Entry of Sentence entered January 28, 2011:

{¶2} “The Court does not approve the Intensive Prison Program or Transitional Control.”

{¶3} It is from his sentencing entry Appellant prosecutes this appeal assigning as error:

{¶4} “I. DEFENDANT’S STATE AND FEDERAL RIGHTS TO DUE PROCESS WERE VIOLATED WHEN THE TRIAL COURT DISAPPROVED TRANSITIONAL CONTROL UNDER R.C. 2967.26 AT SENTENCE.”<sup>1</sup>

{¶5} This Court has previously addressed this exact issue in *State v. Spears*, 2011-Ohio-1538. Upon review we adhere to our prior precedent.

{¶6} Appellant’s sole assignment of error is sustained.

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<sup>1</sup> A rendition of the facts is unnecessary for our disposition of this appeal.

{17} The judgment of the trial court is reversed.

By: Hoffman, P.J.

Edwards, J. and

Delaney, J. concur

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards  
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney  
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
KEVIN OLIVER, II	:	
	:	
Defendant-Appellant	:	Case No. 11CAA020021

For the reason stated in our accompanying Opinion, the judgment of the Delaware County Court of Common Pleas is reversed. This Court orders the Judgment Entry of Sentence entered by the trial court and filed on January 28, 2011, shall constitute the final judgment of sentence with the singular exception the first full

paragraph on page three thereof, which reads, "The Court does not approve the Intensive Prison Program or Transitional Control" is ordered stricken therefrom.

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards  
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney  
HON. PATRICIA A. DELANEY