

ENGLAND AND WALES / JUDGMENT

R v Claire Smith & Ors

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Judgment Approved by the court for handing down. R v Smith Neutral Citation Number: [2025] EWCA Crim 1623 Case No: 202404094 A5 202404096 A5 202404097 A5 202404446 A5 202404447 A5 IN THE COURT OF APPEAL (CRIMINAL DIVISION) ON APPEAL FROM THE CROWN COURT AT SOUTHWARK His Honour Judge Perrins T20220251 Royal Courts of Justice Strand, London, WC2A 2LL Date: 16 December 2025. Before : THE PRESIDENT OF THE KING'S BENCH DIVISION MR JUSTICE BRYAN and MRS JUSTICE STEYN DBE

- ----- Between : Appellant Respondent REX
- and - CLAIRE SMITH LOUIS McKECHNIE RILEY INGS CHRISTOPHER BENNETT RACHEL STEELE
- -----
- ----- Shina Animashaun (instructed by Hodge, Jones & Allen) for the Applicants Smith, McKechnie and Ings Laura Stockdale (instructed by Hodge, Jones & Allen) for the Applicants Steele and Bennett Ailsa McKeon (instructed by Crown Prosecution Service) for the Respondent Hearing date: 29 October 2025 Judgment Approved by the court for handing down. R v Smith
- ----- Approved Judgment This judgment was handed down remotely at 10.30am on Tuesday 16 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice. Judgment Approved by the court for handing down. R v Smith Dame Victoria Sharp, P. 1. On 28 August 2024 in the Crown Court sitting at Southwark, the applicants, Claire Smith, Louis McKechnie, Riley Ings, Christopher Bennett and Rachel Steele were each convicted after a trial before His Honour Judge Perrins and a jury, of criminal damage contrary to section 1 of the Criminal Damage Act 1971. The damage was done to the Queen Victoria Memorial which stands in front of Buckingham Palace. 2. On 18 October 2024 the applicants were sentenced as follows:- i) ii)

iii) iv) v) Claire Smith, then aged 26: 18 months' imprisonment suspended for 2 years with 200 hours unpaid work and a rehabilitation activity requirement of up to 20 days, with an order for compensation being made in the sum of £500 to be paid to The Royal Parks; Louis McKechnie, then aged 23: 18 months' imprisonment suspended for 2 years with 200 hours unpaid work and a rehabilitation activity requirement of up to 15 days, with an order for compensation being made in the sum of £500 to be paid to The Royal Parks; Riley Ings, then aged 27: 18 months' imprisonment suspended for 2 years with 200 hours unpaid work, with an order for compensation being made in the sum of £500 to be paid to The Royal Parks; Christopher Bennett, then aged 33: 18 months' imprisonment (to be served concurrently to a sentence imposed for an offence committed after this one, for conspiracy to cause public nuisance, (tunnelling under a road)); Rachel Steele, then aged 48: 18 months' imprisonment suspended for 2 years with 200 hours unpaid work and a rehabilitation activity requirement of up to 20 days, with an order for compensation being made in the sum of £1000 to be paid to The Royal Parks. 3. The various applications for extensions of time (of 3 days for Smith, McKechnie, and Ings and 32 days for Bennett and Steele) and for leave to appeal against sentence, have been referred to the Full Court by the Registrar. The facts 4. 5. The Queen Victoria Memorial (the Memorial) is a Grade I listed marble monument situated directly in front of Buckingham Palace, at the end of the Mall, consisting of a sculpture of Queen Victoria surrounded by a pool and fountains. The Memorial is prominent at times of national celebration, and as a monument to a former Monarch and because of its situation, is self-evidently, a heritage asset of particular significance and historic importance. On 26 August 2021, the environmental pressure group "Extinction Rebellion" carried out a series of protests and demonstrations in central London. The five applicants Judgment Approved by the court for handing down. R v Smith decided to mount their own action, which was more directly concerned with animal rights. Shortly before 2pm, the applicants entered the fountains surrounding the Memorial. The events were captured on CCTV, and subsequently, on footage from body worn cameras worn by the police. Once in the water, the applicants proceeded to pour red dye into it. That dye was in plastic containers they had brought with them from an Extinction Rebellion assembly point. Each container bore a label which said: "Do not allow liquid concentrate or strong solutions to come into contact with stone or dyeing of the surface could occur" and "remember it is easy to add dye but impossible to remove dye from water". At least one of the applicants said in evidence at the trial that they had read this label. Once the dye was in the water, the applicants moved it around to disperse it more widely. Some of them threw bottlefuls of the dyed water towards the marble stonework, and dipped their hands into it putting further red smears and red handprints on the marble stonework. The applicants' intention was to create the impression of a bloodbath: and they and others carried placards which said: "Animal Agriculture A Royal Blood Bath". The police arrived within minutes, as did others with responsibility for the Royal Parks. The applicants were asked to get out of the water but refused to do so. Officers had to enter the water to arrest the applicants, and forcibly remove them. The consequences of the applicants' actions were plain to see. The water and some of the marble stonework were dyed a deep red. Indeed the dye had soaked deep into the marble stonework and

multiple treatments by specialist cleaners were required over several days to remove it (the fountains had to be drained, and the stone bowls cleaned - a time consuming operation because of the fountain's Victorian drainage system). This took a total of 64 hours at a cost of more than £7,000. The marble stonework is of a light colour, and porous. There was therefore a real and obvious risk that putting the dye in the water would permanently stain it red, and in fact, the evidence at trial was that, but for the prompt action that was taken, the marble stonework would have been permanently stained. By their verdict, the jury rejected the applicants' case that what they did, did not amount to criminal damage and found that each applicant intended to cause damage to the Memorial or was reckless as to whether they did so. 6. 7. 8. 9. Sentencing 10. 11. In his sentencing remarks the judge said the applicants were each party to the protests. Though they played slightly different roles, they were all part of a plan to dye the fountain red and stain the stonework, and each had intended to cause criminal damage. He also considered there was no proper basis to distinguish between the roles the applicants had each played: putting it simply he said, they were in it together and were all equally responsible. The judge rejected the submission that this was not serious criminal damage and that it was, in some way, a proportionate exercise of the applicants' rights to freedom of expression. On any view, he said this was a serious act of criminal damage. Had the Memorial not been cleaned quickly and efficiently, there was a very real risk that the marble stonework would have been permanently damaged. Having heard the evidence Judgment Approved by the court for handing down. R v Smith 12. 13. 14. 15. that each of the applicants had given at trial, he was satisfied that none took this risk seriously, or frankly even cared. The judge said each of the applicants thought their actions were entirely justified, and displayed a high degree of arrogance; they thought they were completely right, their views were all that mattered, and the consequences of their actions were a price worth paying for the promotion of their cause. The judge had regard to the Sentencing Guidelines for offences of Criminal Damage, to the Overarching Guidelines on the Imposition of Community and Custodial Sentences, and to R v Trowland [2023] EWCA Crim 919; [2024] 1 WLR 1164. The judge considered the culpability of each defendant was high as there was plainly a high degree of planning (a Category A high culpability factor). In relation to harm, he concluded that it was Category 1 harm due to the serious social impact of the offence (a Category 1 factor). The judge said the applicants had deliberately targeted a culturally significant memorial in one of the most prominent positions in the capital, directly in front of Buckingham Palace, on a summer's day, when hundreds of tourists were present. This was therefore Category 1A offending which, under the Criminal Damage Sentencing Council Guidelines, has a starting point of one-and-a-half years in custody with a range of six months to four years' custody. The judge took into account that the offence was committed in the context of a protest, but said in his judgment, this did not provide significant mitigation noting that the right to protest does not include a right to commit crime. As had been said in Trowland, the more disproportionate or extreme the action taken by the protester, the less obvious is the justification for reduced culpability and more lenient sentencing. As for remorse, the judge said none of the applicants had shown any remorse: none had pleaded guilty or accepted responsibility for what they did, even when it was clear

that they had no tenable defence to the charge. Instead, each applicant had insisted on a trial in the misguided belief that it would allow them a further platform from which to proclaim their beliefs. He did not increase the sentence because they had individually contested the matter, but considered it to be directly relevant to his assessment of whether they had shown any genuine remorse for what they had done. He also observed that the sheer number of cases that were coming before the court, which involved individuals committing serious crime in the name of purported protest, also illustrated the need for an element of deterrence in the sentencing of such crimes. The judge accepted a distinction was to be drawn between protests which result in wanton damage to property (such as was the case here) and those calculated to disrupt the lives of ordinary people going about their business. However, the custody threshold had been crossed, and custodial sentences were merited. In deciding to suspend the sentences, the judge had regard to a number of factors, including the prospect of rehabilitation, whether there was strong personal mitigation, whether imprisonment would result in significant harmful impact on others and the fact that the offences were committed more than three years ago.

Submissions

16. Mr Animashaun of counsel who appears for three of the applicants (Mx Ings, Mr McKechnie and Ms Smith) submits the sentences passed on the applicants he represents were manifestly excessive for the following reasons. First, the judge should Judgment Approved by the court for handing down. R v Smith not have found that the offences passed the custody threshold. In particular, having regard to the nature of offending, the judge erred in finding that the offence fell in the top category for harm and culpability, as there was no significant planning nor serious social harm. Secondly, the judge failed to reduce the sentence, as he should have done for the conscientious objectives of the applicants. Thirdly, the sentences were a disproportionate interference with the applicants' rights under articles 10 and 11 1 of the European Convention on Human Rights (the Convention).
 17. Ms Laura Stockdale of counsel makes common cause with Mr Animashaun for the remaining two applicants, Ms Steele and Mr Bennett. Additionally she submits the judge erred in failing to distinguish the roles of the applicants she represents, from those of the other applicants. This was because Ms Steele and Mr Bennett, who were in the water on the south side of the monument (in contrast to those in the water on the north side, including the other applicants) did not apply the dyed water to the surrounding marble stonework of the Memorial. Discussion 18. 19. Not all cases of criminal damage committed in the context of protest, fall into the category of non-violent protest (see Attorney General's Reference (No. 1 of 2022)
- [2023] KB 37 (CA)). It did not appear to be seriously in dispute at the hearing before us however, that this case fell into this category. The principles that are to be applied in sentencing in such cases have been clearly identified by this court in cases such as Trowland at [50] to [51], [55], [66], [72] and [86] and R v Hallam [2025] EWCA Crim 199 at [7], [15] and [26].

Those cases draw on earlier authorities, to some of which we were referred including *R v Jones (Margaret)* [2006] UKHL 16; [2007] 1 AC 136; *R v Roberts* [2018] EWCA Crim 2739 at [33] and [34]; *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9; [2020] 4 WLR 29 at [98] and [99]. As this court has made clear, sentencing in protest cases is to be carried out in accordance with normal sentencing principles. Thus in protest cases as in any other: references to sentencing in different cases is unlikely to be helpful, since each case is likely to turn on its own facts; a sentencing judge is not obliged to specify an amount by which they have reduced a custodial term to reflect a defendant's conscientious motivation, any more than they are obliged to attribute specific percentage values or figures to individual factors which have been taken into account in the sentencing exercise (no parallel can be drawn therefore with the approach to discounts for guilty pleas); deterrence is an issue pre-eminently to be assessed on the facts, and the court's perception of the need for deterrence can change over time; sentencing must be a dispassionate exercise and it is no part of the judicial function to evaluate or comment on the validity or merit of the cause in support of which a protest is made; 1 Article 10 Freedom of expression 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. Article 11 Freedom of assembly and association 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State. Judgment Approved by the court for handing down. *R v Smith* 20. 21. 22. 23. 24. and in protest cases, as in any other type of case, whether a sentence of immediate custody is appropriate and if so, of what length, is of course a highly fact sensitive matter. Further, the sentencing exercise should not be over complicated simply because articles 10 and or 11 of the Convention may be or are engaged. The common law and the Convention are in step; if therefore the common law principles are applied properly, the defendant's Convention rights should be observed. A conscientious motive on the part of protesters may be a relevant consideration, in particular where the offender

is a law-abiding citizen apart from their protest activities. In such cases, a lesser sanction may be appropriate. The sanction may also be tempered if there is a realistic prospect it will deter further law-breaking and encourage offenders to appreciate why it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law is contrary to the protesters' own moral convictions. However, the more disproportionate or extreme the action taken by the protester, the less obvious is the justification for reduced culpability and more lenient sentencing. Conscientious motivation does not preclude a finding that a defendant's culpability is still high. If it is to be taken into account, conscientious motivation is a factor that, is logically relevant to the assessment of culpability, as opposed to general mitigation. If however, the motivation is properly reflected in the overall sentence, it may not be material that conscientious motivation is taken into account in mitigation rather than in the assessment of culpability. Turning next to the grounds of appeal, we do not consider that they are arguable, In relation to culpability, the judge was entitled to conclude on the evidence that there was a high degree of planning, a Category A high culpability factor, rather than "some planning", a Category B factor. As we have already said, conscientious motivation does not preclude a finding that an applicant's culpability is high, and on the facts of the present case we do not consider such a finding was precluded here (see further, paras 27 to 30 below). The applicants each participated in a well-planned operation with which they associated themselves, and which they put into effect. The decision to put dye into the fountain was planned well in advance. Research was done into the dye, which was sourced and purchased in sufficient quantities to stain the entire contents of the fountain. The applicants went to collect the dye having been in communication using the "Signal" messaging service and then went equipped to the fountain with the intention of using the dye and committing criminal damage as the judge found. The applicants took deliberate steps to maximise the impact of their actions in order to further their cause. They decided upon a time for their protest that would cause maximum impact. Placards were created and the applicants liaised with one another to ensure that enough of them were present to make a significant impact. They also ensured that a photographer was present, with the intention that the full extent of their actions would be published on social media. 25. As to harm, as we have said, the judge considered that one factor (serious social harm) put this into the top category of harm, Category A. Again we consider this was a view he was entitled to take. It is true that the staining to the Memorial was not Judgment Approved by the court for handing down. R v Smith permanent, but this was only because immediate remedial steps were taken. Section 63 of the Sentencing Act 2020 provides that when considering the seriousness of the offence the court must consider not only the harm caused, but any harm which the offence might foreseeably have caused; and in the present case it was indeed foreseeable, that the damage caused would be permanent. The applicants' offending therefore involved foreseeable permanent damage to a memorial of very great national and historic importance. The harm element of this cannot be simply measured by the cost of putting the damage right, nor is it negated because the damage was, in the event, not permanent. Causing (or acting in a way that might foreseeably

cause) permanent damage to nationally important and historic monuments is a serious feature of this type of offending that is capable, depending on the circumstances, of putting it into the highest category of harm. In this context, it should be noted that the Sentencing Guidelines for this offence provide that damage caused to heritage and/or cultural assets is a specific aggravating feature increasing the seriousness of the offending. 26. It should be noted too that legislative changes brought into force for offences of criminal damage committed on or after 28 June 2022 emphasise the particular significance the law attaches to criminal damage to memorials, even if the value of the damage is low.² These have made criminal damage to memorials (as defined by section 22(11A) to (11D) of the Magistrates' Courts Act 1980) "either way" offences, regardless of the value of the damage by increasing the statutory maximum sentence for such offending to 10 years' custody: see section 22(11A) to (11D) of the Magistrates' Courts Act 1980, inserted by section 50 (and section 208(5)(c)) of the Police, Crime, Sentencing and Courts Act 1980.

27. We do not accept, as is argued, that the judge failed to reduce the sentence by reason of the conscientious objectives of the applicants or that the sentences passed were a disproportionate interference with the applicants' rights under articles 10 and 11 of the Convention. 28. 29. The applicants' actions in the present case were reprehensible, but it was common ground both before the judge and before us that articles 10 and 11 were engaged at the sentencing stage. However, there are in a democratic society many means of protest and opportunities for freedom of expression which do not involve the commission of criminal offences. The fact that the applicants' expression of opinion involved criminal damage accordingly weakened the protections afforded by articles 10 and 11, and so the weight to be attached to those protections when considering the proportionality of the sentences passed. The judge said that although he took into account the fact that the offence was committed in the context of a protest, this did not, in his judgment, provide significant mitigation. Whilst he appeared therefore to take account of what has been described as "conscientious objectives" in the context of mitigation, he immediately then referred to Trowland and the fact that the more disproportionate or extreme the action taken by the protester, the less obvious is the justification for a reduced culpability and more lenient sentencing. Looking at the sentencing exercise overall, we do not consider the way he expressed himself about this shows he did not have the relevant 2. Albeit not directly relevant to the sentences passed in this case because the offences were committed before the legislative changes, and the value of the damage to the Memorial exceeded £5,000. Judgment Approved by the court for handing down. R v Smith considerations in mind or led him to a material error of principle or the passing of sentences that were manifestly excessive. 30. The judge was right to reject the applicants' contention that their actions were a proportionate exercise of their Convention rights; this was the defence which they had run at trial, and which the jury, by their verdict, had rejected. Nonetheless, he clearly did take their conscientious motivation into account most notably by suspending the sentences (or, in Mr Bennett's case, making the sentence concurrent to a sentence he was already serving). He rightly considered that in the

context of what was disproportionate action on the applicants' part, the effect of such motivation was limited. In any event, the imposition of suspended sentences of imprisonment was itself a proportionate approach to the offending. Provided the applicants did not offend again in the operational period they would not be subject to further penalty, whilst the sentence in the meantime operated as a disincentive to, and protected the public from further such offending. 31. For the sake of completeness we should add that given the categorisation of this offending within the guidelines, the custody threshold was plainly passed.

32. We can address the discrete ground of appeal advanced on behalf of Mr Bennett and Ms Steele as to the lesser roles they are said to have played in this offending, more briefly. It is said that these two applicants were located on the south side of the monument and, unlike those located on the north side, they did not apply the dyed water to the surrounding marble stonework of the memorial intentionally or at all. 33. However, the case was prosecuted on the basis that all five applicants were involved in a joint enterprise: they all intended to go into the fountain and participate in the application of dye to its water and stonework, and accordingly there was no basis for distinguishing between them. The judge so found in his sentencing remarks, and we consider he was entitled to do so. Each of the applicants was lending encouragement and support to the others, and there were ample grounds for concluding they were equally responsible for the damage that occurred. Outcome 34. It follows that all applications (including for an extension of time and for leave to appeal against sentence) are refused.

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