



# Courts and Tribunals Judiciary

## R V MORGAN TROWLAND and MARCUS DECKER

[2023] EWCA Crim 919

### **SUMMARY OF THE DECISION OF THE COURT OF APPEAL, CRIMINAL DIVISION, ON 31 JULY 2023 (Carr LJ, Cutts J and Thornton J)**

1. Mr Morgan Trowland and Mr Marcus Decker appeal against sentences of imprisonment of 3 years (Mr Trowland) and 2 years 7 months (Mr Decker). Their sentences follow conviction, after a 7 day trial in front of a jury, for the criminal offence of intentionally or recklessly causing a public nuisance contrary to s. 78(1) of the Police, Crime, Sentencing and Courts Act 2022.
2. In the early hours of 17 October 2022, the appellants scaled the Queen Elizabeth II bridge on the M25 carriageway. They suspended themselves in hammocks and hoisted a banner across the bridge bearing the slogan “Just Stop Oil”. They remained there until arrested some 36 hours later. The bridge was closed for approximately 40 hours as a result of the protest, causing disruption to many thousands of members of the public.
3. Data from the National Highways System revealed that as a result of the protest, a minimum of 564,942 vehicles were delayed, with a minimum period of delay of 60,547 hours. At 8.30am on 17 October, there was a queue of over 8 miles long at junction 4 of the M25, south of the bridge, and a 7-mile queue north of the bridge. In rough terms, the economic impact of the disruption was valued at around £917,000.
4. Distress, disruption and financial loss to members of the public included:
  - i) Those who missed the funeral of a close friend or relative;
  - ii) Those who missed a medical appointment or therapy, leading to continued pain and/or additional distress;
  - iii) Those who lost wages and/or missed important client appointments;
  - iv) Work projects, such as a housing project for vulnerable people, delayed;
  - v) Children left waiting unattended;
  - vi) Significant loss of business revenue.

5. The appellants appeal on the grounds that their sentences were manifestly excessive and a disproportionate interference with their rights of freedom of expression and assembly under Articles 10 and 11 of the European Convention of Human Rights.
6. The appeals are dismissed.
7. It is no part of the judicial function to evaluate (or comment on) the validity or merit of the cause(s) in support of which a protest is made.
8. Whether or not a sentence of immediate custody for this type of offending is warranted and, if so, what length of sentence is appropriate, will be highly fact-sensitive, set in the context of the relevant legislative and sentencing regime.
9. The sentencing judge made no material error of principle. His sentences were severe. But the Court concludes that they were not manifestly excessive; nor did they amount to a disproportionate interference with the Appellants' rights of freedom of expression and assembly under Articles 10 and 11 so as to be unlawful. This was very serious offending by repeat protest offenders who were trespassers (and on bail) at the time; whilst the protest was non-violent as such, it had extreme consequences for many, many members of the public. Mr Trowland stated in his evidence that "the warning message is dependent on disruption". The grave consequences were not only inevitable, as the protesters would have known, they were precisely what the protesters intended and set out to achieve.
10. In coming to its conclusion, the Court acknowledges the long and honourable tradition of civil disobedience on conscientious grounds. The Court recognises that the sentences imposed go well beyond previous sentences imposed for this type of offending under the old common law offence. However, they reflect Parliament's will, as enacted in s.78. By s.78 Parliament introduced a new fault-based public nuisance offence for what includes non-violent protest behaviour, with a maximum sentence of 10 years' imprisonment. Further, the sentences meet the legitimate sentencing aim of deterrence for such offending in current times. The sentences should not be seen as having a "chilling effect" on the right to peaceful protest or to assembly more generally; deterrence and "chilling effect" are not the same. This protest was of a wholly different nature and scale to the many non-violent protests of conscientious activists up and down the country exercising their rights to freedom of expression and assembly on a daily basis.

**Important note for the press and the public: this summary is provided to assist in understanding the Court of Appeal's decision. It does not form part of the reasons for the decision. The full judgment ([2023] EWCA Crim 919) is the only authoritative document. The judgment is a public document and is available online at Judgments Archive - Courts and Tribunals/Judiciary: <https://caselaw.nationalarchives.gov.uk/>**