

## **Rex v. Tyler Kay**

### **Sentencing remarks**

1. You have been committed for sentence to the Crown Court at Northampton for the offence of publishing written material which was threatening, abusive or insulting, intending thereby to stir up racial hatred or, having regard to all the circumstances racial hatred was likely to be stirred up thereby, contrary to section 19(1) of the Public Order Act 1986, as amended. Racial Hatred is defined by section 17 of the 1986 Act as meaning “hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins”. In this case, the racial hatred relates to foreign refugees and asylum seekers.
2. Your offending must be seen in the context of the widespread and extensively reported scenes of disorder, violence and criminal damage which have taken place around the country, beginning in Southport and spreading to other locations between the 30<sup>th</sup> of July 2024 to date in a number of cities across the country. There has of course been coverage of this disorder in mainstream media and online and you knew that your conduct participated in and encouraged a pattern of incidents involving racial hatred and serious disorder that took place around the country. This conduct will always attract immediate and substantial punishment.
3. On Wednesday 7<sup>th</sup> of August on the social media platform X (Formally known as Twitter), your account named @tyjkay made a public post stating “*mass deportation now, set fire to all the fucking hotels full of the bastards for all I care... if that makes me racist, so be it*”. The post added the hashtags: #standwithlucyconnolly #fucknorthamptonshirepolice #conservative #farageriots #riotsuk #northampton.

Following his posting of the message *“That’s 100% the plan, plus gloves. No car either so no number plates to travel and a change of clothes nearby”*. Your other posts on X made clear a desire to be involved in organised protests in Northampton and provided guidance to others on techniques to avoid police detection. The posts included a screenshot of another message inciting action against a named immigration solicitors in Northampton including a time and place were highlighted, several fire emojis were present and the words *“no more immigration”* and *“mask up”* along with your added comment *“The original post was deleted or removed. So have a screenshot instead!!”* Your words added were *“Let’s go”*. A similar screenshot was posted by you six hours later, on the same day with numerous hashtags this time including #immigration, #asylum, #riots.

4. On the 7<sup>th</sup> of August 2024, you were arrested at your home address and interviewed yesterday. You admitted that you were responsible for the posts and denied being a racist. You denied any intention to cause harm but might have gone to watch on the sidelines. You implied that the posts were as a result of your sense of humour.
5. You have served a basis of plea today to the effect that you did not by your actions intend to stir up racial hatred. You have given evidence on a trial of issue. I rejected your basis of pleas. You are an intelligent, articulate and media savvy person. You were evasive about your interest in the topics on social media and your awareness of the surrounding events. The nature of the posts are self-evident. You posted as you did because you thought there were no consequences to yourself from stirring up racial hatred in others. You have a keen interest in current events. The overall tone of the posts identified clearly reveals your fundamentally racist mindset. You have tried

ineffectually to provide alternative explanations for the inflammatory posts. You have attempted to portray yourself as naïve and distance yourself from the racist content; to say that your posts were foolish but that you had no intention to stir up racial hatred. I am sure that you knew that what you were posting would stir up racial hatred in others and that this was what you intended. You may have done something you now regret but I am sure that when you intentionally created the posts you intended that racial hatred would be stirred up by your utterly repulsive, racist and shocking posts that have no place in a civilised society, including on social media.

6. You are 26 years old and have a single previous conviction for theft from your employer in September 2020 for which you were made subject to a community order.
  
7. The maximum sentence for this offence following conviction on indictment is 7 years' imprisonment. In sentencing you I must have regard to the Sentencing Council definitive guideline for offences of Racial Hatred, including the offence contrary to section 19. The culpability is high, category A because in light of the timing and nature of the postings you clearly intended to incite serious violence. I assess the harm as category 1. The messages directly encourage life-threatening or life-endangering activity, within the context of racial hatred offences. The nature of the social media platform means the posts could have been viewed by any member of the public. The captured posts show views ranging from the low hundreds up to 3457 for the post referring to setting fire to hotels which amounts to widespread dissemination. I bear in mind that the Sentencing Council General Guideline on Overarching Principles includes within the general guidance on assessing "harm" that there may be primary and secondary victims of an offence and, depending on the offence, victims may include one or more individuals, a community,

the general public and the state. An assessment of harm should generally reflect the overall impact of the offence and may include direct harm and consequential harm.

8. A category A1 case carries a starting point of 3 years' custody and a range of 2 to 6 years' custody. There are no statutory aggravating features because there are no relevant previous convictions. The other aggravating factors are that the offence is clearly aggravated by the timing of the incident and the sensitive social climate. The offence was committed during a period of serious disorder in a number of locations across the country on a national scale. The factors reducing seriousness or personal mitigating features are that you grew up in care, were subject to domestic violence as a young person. You are only 26 years of age and have only one previous conviction for a dissimilar matter. He will lose his accommodation.
  
9. The sentence is so serious that only an immediate custodial sentence is appropriate. The sentence I will impose will be the least sentence commensurate with the seriousness of the offence. I have taken into account the current conditions in custody. The notional sentence after trial taking into account the aggravating and mitigating features is one of 4 years' imprisonment. Having regard to the guideline on the reduction of sentences for guilty pleas I note that in circumstances where an offender's version of events is rejected at a Newton hearing the reduction which would have been available at the stage of proceedings the plea was indicated should normally be halved. For a plea at the first opportunity in the Magistrates' Court the reduction would be one third. However, you have given evidence before me. I have rejected your evidence as to your intention entirely. Accordingly, I will reduce the sentence by 20 per cent to reflect his admissions as to most of the facts at an early stage.

10. Accordingly the sentence I pass is one of 38 months' imprisonment. You will serve up to one-half of your sentence in custody. You will serve the remainder on licence. You must keep to the terms of your licence and commit no further offence, or you will be liable to be recalled and you may then serve the rest of your sentence in custody.

11. A deprivation order is granted for the devices seized. If the victim surcharge applies the order will be drawn up in the appropriate amount and a collection order made. There will be no order for costs in light of the immediate custodial sentence.

**HHJ Lucking KC**

**9<sup>th</sup> August 2024**