R v Daniel Thomas

Preliminary issue on sentencing powers

I start with a preliminary point of law in relation to my sentencing powers. The Defendant, Daniel Thomas, aged 37, was charged with an offence in relation to failing to disclose his phone PIN and passwords, contrary to Section 53 of the Regulation of Investigatory Powers (RIPA) Act 2000 (Count 1) and an offence of damaging property, contrary to Section 1(1) of the Criminal Damage Act 1971 (Count 2) in relation damaging a rigid hull inflatable boat that was used to transport migrants on 22 September 2026. The Defendant appeared before Basingstoke Magistrates on 25 September 2026 and elected trial by jury on both charges, so they were sent to the Crown Court as either way offences under Section 51 of the Crime and Disorder Act 1998. He was remanded in custody.

Last week, at the PTPH on 12 November 2026, the Defendant pleaded not guilty to Count 1 and guilty to Count 2. Those pleas were accepted by the Prosecution, so I ordered Count 1 to lie on the file at their request. What then are my sentencing powers in relation to Count 2? If the offence of criminal damage had been dealt with in the Magistrates, the maximum term would have been 3 months. The maximum term for criminal damage as an either way offence in the Crown Court is 10 years.

The offence of criminal damage is an either way offence which can be treated as summary only if the damage is less than £5000. The migrant boat has since been destroyed, which is the normal practice, and there is no way of quantifying the damage. The Prosecution says that the cost of the damage would have been significant but accepts they cannot now prove that the damage exceeds £5000.

Section 22(1)-(3) of the Magistrates Court Act 1980 provides a procedure in which the Magistrates may determine the value of the damage for the purpose of this offence but no such determination was made by them in this case because the value was unknown at the time. The Magistrates therefore adopted the procedure under Section 22(4) and offered the Defendant the choice of summary trial or Crown Court trial. He

chose the latter in respect of each offence and both charges were sent for trial as either way offences under Section 51 of the Crime and Disorder Act 1998.

The case of *Alden [2002] EWCA 421* held that the 10 year maximum applies where the charge is added to the Indictment after sending. The case of *Gwynne [2002] EWCA 2951* held that, where following a sending for trial under Section 51 of the Crime and Disorder Act 1998, the Crown Court's powers are limited to 3 months. In *Gwynne,* the Crown Court assessed the value as under £5000 under the procedure in paragraph 14 of Schedule 3 of the Crime and Disorder Act 1998. I note however that the offences of criminal damage in that case were sent under Section 40 of the Criminal Justice Act 1988 which provides for summary offences to be sent with indictable only offences, which is not the case here.

Mr Smith KC for the Prosecution points out that paragraph 14 of Schedule 3 applies only where the Court 'has to' determine the value for the purpose of Schedule 3 but that such a procedure does not have to be undertaken where the procedure under Section 22(4) was followed, as it was in this case. He submits that such a procedure 'has to' be undertaken only when the criminal damage matter has been sent for trial as arising from the same facts as an indictable only offence under Section 40 of the 1988 Act without an earlier analysis as to value (as in *Gwynne).* Mr Smith submits that no such procedure is required in the Magistrates or the Crown Court if it has been sent as an either way offence under Section 22(4), as it was here, and in those circumstances, the higher maximum applies, so I should apply the higher value criminal damage guideline.

There is some support for Mr Smith's proposition in *R v Campbell [2026] EWCA Crim 51* which concerned the either way offence of racially aggravated criminal damage, a case where the damage was less than £5000. The issue was which sentencing guideline (less than £5000 or more than £5000) applied in that case. Giving the judgment, Edis LJ did not purport to settle the issue in this case but he considered the apparent contradiction between *Alden* and *Gwynne* and stated (paragraph 39): *The logic of Alden provides that an offence of criminal damage, whatever its value, is an either way offence with a maximum penalty of 10 years unless a judicial decision has been made in the Magistrates Court under Section 22 of the Magistrates Cour Act or*

(if Gwynne is rightly decided) in the Crown Court under paragraph 14 of Schedule 3 to the [Crime and Disorder] Act 1998, which caps the sentencing powers to a maximum term of 3 months. In this case no such judicial decision was made and the basic offence should be treated as one which was an either way offence with a maximum penalty of 10 years. The Judge was therefore right to use the higher guideline...

I have considered the submissions of Mr Pentol KC on behalf of the Defendant that where there is uncertainty in the law, I should adopt the safer course of treating this criminal damage offence as one which attracts the lower maximum term of 3 months. I have however concluded that this offence was indeed sent as an either way offence under Section 22(4) of the Magistrates Court Act 1980, without a determination as to value. I have also concluded that it was not sent as if it were a summary offence under Section 40 of the Criminal Justice Act 1988, so there is no requirement for this Court to make that determination of value under paragraph 14 of Schedule 3 of the Crime and Disorder Act 1998. I will therefore proceed on the basis that Count 2 was sent as an either way offence to which the higher maximum term and the higher value guideline applies.

<u>The facts</u>

The Defendant, Daniel Thomas is a founder of 'patriot platform' which is an anti-migrant protest movement. It relies on social media for promotion of its message. It is not for me to make any judgment of the political cause. On 22 September 2026, he and others were in the English Channel on their own rigid hulled inflatable boat (RHIB). He video recorded and live streamed another RHIB carrying migrants, which had been detained by the authorities. The migrants in the boat were being assisted by the RNLI, the Coastguard, Border Force and a French lifeboat. The video recording shows Daniel Thomas' boat approaching the two boats engaged in rescue and recovery of the migrants.

On his livestream, Daniel Thomas broadcasted the postcode of the place in Gosport to which the migrants were to be taken. I judge that was to encourage protest because he also said to like and '*share this everywhere'*. I note Daniel Thomas also said '*no*

violence'. Daniel Thomas then gave instructions to approach one of the boats, saying *'video this…and make sure it's on me'.* Once the migrants had been brought onto RNLI lifeboats, Daniel Thomas said, "*let's get rid of that boat*" and shouted, "*this is what needs to happen to every one of these boats"* and *"you're not using these boats, no more migrants in this country".* As his boat approached the RHIB, a French rescue worker stepped onto the RHIB. Daniel Thomas told him that he was in English waters then slashed the side of the RHIB about 8 times with a knife, making a hole and a hissing sound as the air escaped. I accept that there was no immediate danger to the rescue worker in the RHIB which remained afloat, although the proximity of any protestor, shouting at them so aggressively and slashing the boat with a knife would have been highly alarming. Daniel Thomas shouted "'*Get off the boat, you've got time to get off the boat'* and '*This is not France, take them back, no more.., we pay you too much money…don't take that back to France, traitors'*.

Aggravating factors

The aggravating factors identified by the Prosecution for the incident are as follows:

- The damaged boat was under the control of the law enforcement authorities who were performing their duty in recovering it;
- The offending took place when Border Force and Coastguard officials were present and attempting to investigate potential immigration offences;
- The offending took place when RNLI volunteers were doing their duty in rescuing or recovering migrants who were attempting a dangerous crossing;
- The Defendant used a knife to cause the damage;
- The Defendant live streamed the whole incident on social media.

I must be careful not to double count any of those factors as aggravating factors if I take them into account when assessing culpability and harm.

The Defendant

Daniel Thomas has a record of offending which includes public order offences of threatening words or behaviour in 2006 and 2007, being carried in a stolen vehicle in

2011, fraud in 2013 and kidnapping in 2016, for which he was sentenced to 2 years' imprisonment. I accept the Defence point that these matters were some years ago.

At the time of this criminal damage offence, Daniel Thomas was on bail awaiting trial in Kent for alleged offences of aggravated trespass, public order offences and maritime offences in Dover in March 2026 when he entered a migrant processing centre by scaling a perimeter fence and allegedly became aggressive as he was being escorted out. In April 2026, he was found on a disused pier filming the same processing centre. As officers approached, he threatened to jump into the sea, repeatedly shouted comments concerning migrants and shouted at life boat volunteers. Later in April 2026, it is alleged that he entered the Western Docks in Dover and interfered with the activities of border force and security personnel. I accept that these are as yet unproven allegations, but it is a serious aggravating factor that he was on bail at the time of this offence.

Mitigation

The Defendant is in relationship with a long term partner. They have four children and expect a fifth child next year. He has a successful roofing company that employs up to five people. The business and family finances have suffered since he was remanded in custody. I have read and take into account the positive character references from his partner and his mother who both rely heavily on the Defendant. I accept that his absence has caused practical and emotional hardship to the family. I have also read positive testimonials from his cousin and others who confirm that he is an active member of his local church.

Approach to sentencing

I have had regard to the sentencing guidelines for the offence. Having concluded that the higher maximum sentence applies, then the higher guideline applies but I should also have regard to the lower value guideline in a case of this kind as indicated in *Campbell*. I also have regard to the general principle stated in another criminal damage protest case, *R v Smith & others [2025] EWCA 1623,* which is that sentencing is a dispassionate exercise. It is not therefore my role to evaluate or comment on the validity or the merit of the cause in support of which any protest is made. I must sentence in accordance with the sentencing guidelines, taking into account the

unusual nature of the offence, and that requires an assessment of culpability, harm, aggravating and mitigating factors.

Culpability

The Defendant travelled with others to the scene in his own boat and livestreamed the whole event, including the act of slashing at the migrant boat several times with a knife on board. That requires advance organisation and preparation, so there was in my view a high degree of planning or premeditation for this offence. This offence was therefore higher culpability A rather than medium culpability B in my view.

Harm

For the reasons I have already set out, the financial value of the damage has not been quantified but I also have regard to the fact that harm is measured in other ways in the sentencing guideline. This offence of causing damage by slashing with a knife at a migrant boat, which contained a rescue worker at the time, was broadcast by livestream. It was intended to have an impact on a large audience. I infer that its broadcast was also intended to encourage and celebrate this kind of conduct. It was intended to be seen and replayed, as it has been, by the public at large on social media. The social impact was therefore serious and such that it could place the offence in harm category 1. I must then also have regard to the lower value guideline and the fact that the value was relatively low in that it cannot be proved to exceed £5000. Low value is a harm category 3 factor. Balancing those factors, I place harm in category 2.

A culpability A offence with category 2 harm has a starting point of 6 months imprisonment with a range from high level community order to 18 months imprisonment on the relevant guideline.

Impact of aggravating factors

I have concluded that two aggravating factors take this offence slightly above the high end of that range. First, this offence was committed when on bail for the alleged offences in Dover. Second, quite apart from the livestreaming element that I have already mentioned when assessing harm, this offence amounted to a flagrant interference with and a deliberate disruption of the legitimate activities of the Border Force, the Coastguard, and the RNLI volunteers. All those organisations perform essential roles in policing the maritime border or law enforcement or investigation or

the rescue or recovery of migrants at sea. They do necessary, highly sensitive, and very difficult jobs and their work should not be disrupted by a publicity seeker slashing with a knife at a boat that they were trying to recover as part of their roles and duties.

Sentence

Taking those serious aggravating factors and personal mitigation into account, I would therefore have increased the sentence to one of 20 months imprisonment had you had a trial. I reduce that to 15 months to give credit for your guilty plea.

I have considered the imposition of custodial and community sentences guideline and whether I can or should suspend that sentence. I accept that your imprisonment has caused hardship to your family but I have concluded that only an immediate custodial sentence of 15 months is appropriate punishment for an offence of this seriousness.

The time you have served will count towards your sentence. You will serve up to one third of your sentence in custody. When you are released, you will be on licence and then post-sentence supervision for a total of 12 months after that. You must comply with the terms of the licence and supervision and commit no further offence or you will be liable to serve a further period in custody. The victim surcharge applies.

HHJ James Newton-Price KC

20 November 2026