

# Craig Murray contempt of court appeal refused by Scottish High Court

Steve James  
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The Scottish High Court has refused Craig Murray, the journalist and blogger, leave to appeal his conviction for contempt of court to the UK Supreme Court.

Murray was found in contempt for his reporting of last year's trial at the Scottish High Court of Alex Salmond, former Scottish First Minister. Salmond was acquitted on all 13 charges of sex offences, including attempted rape.

Murray was found to have breached a court order issued during the trial protecting the anonymity of the female complainants. He published articles which, together with items already in the public domain could, it was ruled by three judges, have allowed a "jigsaw" identification of a number of the complainants.

Murray still intends to pursue an appeal directly to the Supreme Court. He also aims to appeal the eight-month prison sentence handed down to him. The warrant for his imprisonment has been suspended for four weeks.

The political character of Murray's conviction can be seen in the fact that several mainstream reporters of the Salmond case published pieces of information that could, along with other items, also have contributed to complainants being identified, yet only Murray was accused of contempt. No one in Scotland has ever previously been jailed for jigsaw identification.

Murray's lawyer, Roddy Dunlop QC, told the appeal hearing that the case raised issues covered by Article 10 of the European Convention on Human Rights (ECHR)—the right to free speech. According to Dunlop, "The proliferation of blogging, of commenting on the judicial process, which as a generality must be seen as a welcome part of Article 10 makes the outcome here one of high general public importance..."

"This case has attracted a great deal of public interest,

a great deal of public comment and a great deal of public concern. Much of that comment and concern has highlighted Mr Murray alone was brought to the attention of the court despite other journalists publishing material that was arguably more likely to identify the complainers. Some of that has led to public comment that proceedings against Mr Murray were politically motivated."

Dunlop felt obliged to add, "I myself make no such submission... But the fact remains these comments are out there and they continue to be made on matters of real public concern."

Murray's blog commentary made clear that the case against Salmond, whom he supports, was a component of a bitter factional warfare raging between the Scottish National Party (SNP) leadership, the top echelons of the Scottish state and Salmond himself. The feud also involved a #MeToo style witch-hunt against Salmond involving exaggerated and entirely concocted offences, a police investigation, an internal Scottish government investigation and a judicial review won by Salmond.

Following Salmond's acquittal, two Scottish parliamentary investigations, to which both Salmond and his successor Nicola Sturgeon gave evidence, rocked the Scottish political establishment. The case also exposed the extraordinarily close ties between Sturgeon's inner circle, the Crown Office, the Scottish Civil Service and Police Scotland.

Subsequently, the head of the Crown Office, Scotland's prosecution service, James Wolfe has announced his intention to resign. The SNP itself has split, with Salmond forming his own small party, Alba, along with former justice secretary, Kenny MacAskill, seeking to pressure the SNP into immediate negotiations for independence.

Within this feud, the status of the anonymous

complainants was a matter of no small significance. All were high level Scottish government or SNP officials or leading members of the SNP. All were reported as being close to First Minister Sturgeon. Some were coached and encouraged into making their complaints under internal processes found by a judicial review won by Salmond to be "unlawful and tainted by apparent bias". A number were in contact with each other.

In his blog, Murray attempted to draw attention to the closeness of the complainants to Sturgeon, and to indicate the orchestrated nature of the moves against Salmond, without naming names. He repeatedly made clear he supported the legal right of anonymity in sex cases and in his articles sought to stay within legal boundaries.

In his appeal submission, reported by the *Dissenter* whistle blowing blog, Murray's lawyers complained that, in determining the meaning of "jig saw identification", it is "impossible for any publisher to know what section of the public the court will have in mind when assessing whether published information will identify someone."

The appeal continued, warning that a "'particular section' of the public could be so small that it is no longer 'the public' in any meaningful sense, yet identification to that section of the public—however small and however close to the complainers—would still breach the order."

None of this counted with the appeal judges, led by Lady Leona Dorrian, who was also the trial judge in the Salmond case. The ruling insisted that "objectively speaking, the applicant had published material which was likely to disclose the identity of complainers in the trial."

The ruling also explicitly rejected any suggestion that publication of Murray's articles was in the public interest. Instead, the judges singled out Murray's status as a "journalist in new media", commenting that "it is relevant to distinguish his position from that of the mainstream press, which is regulated, and subject to codes of practice and ethics in a way in which those writing as the applicant does are not."

In other words, the Scottish judges consider Murray is deserving of especially brutal and exemplary treatment because he has not played by the rules which the official press adhere to in politically sensitive cases, particularly those embarrassing to the government.

Murray is also a trenchant defender of jailed journalist and WikiLeaks founder Julian Assange.

The ruling rejected submissions that Murray's right to free speech covered by Article 10 had been breached on the basis that there was "no arguable point of law". Dorrian, it should be noted, in a move widely denounced in legal circles, has recently proposed that juries be done away with in sex cases, to be replaced by a single judge.

The submission that Murray's eight-month sentence was disproportionate was also dismissed. Prison sentences for press offences can only be deemed compatible with Article 10 "in exceptional circumstances, notably where other fundamental rights have been seriously impaired."

According to the *Dissenter*, Murray's lawyers submitted that neither they nor the prosecution "can recall any situation in recent history where any editor, broadcaster or journalist has been committed to prison for 'media contempt,' even where that contempt has required the discharge or adjournment of the proceedings in question."

The appeal judges rejected submissions regarding the state of Murray's health. The 62-year-old suffers from pulmonary hypertension and a number of heart conditions. A prison sentence could endanger his life. The judges upheld the sentence as "an exercise in proportionality".



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