

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CRI-2017-092-015287
[2021] NZHC 3354**

THE QUEEN

v

MALIA UNALOTOKIPEA LI

Hearing: 8 December 2021

Appearances: J Rhodes and F J Faull for the Crown
M Ryan and N Tupou for the Defendant

Sentencing: 8 December 2021

SENTENCING NOTES OF WYLIE J

Solicitors/counsel:
Kayes Fletcher Walker, Auckland
M Ryan, Auckland

Introduction

[1] Ms Li, this is a sad case. You appear for sentence today having been found guilty of manslaughter following a jury trial which ran from 24 May to 1 July 2021. You failed to provide your husband, Lanitola 'Epenisa, with the necessities of life, thereby causing his death. This was an offence pursuant to ss 150A, 151, 160(2)(b) and 171 of the Crimes Act 1961. It is punishable by a maximum penalty of life imprisonment.

[2] Regrettably, your sentencing has had to be adjourned twice, both times at the request of your counsel. They were unable to obtain relevant reports because of the Covid-19 restrictions which have been in place since mid-August of this year.

Relevant facts

[3] You and your husband had been married for some years. You had twin daughters. At the time of your offending they were 16-17 years of age.

[4] Prior to your husband's death, you were employed as a health care assistant for a period of almost three years. In this role, you received basic health care training – including on how to look after the elderly and infirm.

[5] In September 2014, your husband suffered a stroke and he was admitted to hospital. He was discharged in late 2014. At the time he was able to walk independently with the aid of an ankle splint and a crutch. He was continent and able to manage his own toileting. Shortly after his discharge, he suffered a second stroke and was readmitted to hospital. He was discharged for a second time in February 2015. He was then capable of feeding himself with adaptive cutlery but he required assistance with showering and dressing.

[6] Before your husband was discharged from hospital for the second time, he was referred to Taikura Trust so that his needs could be assessed and care arrangements put in place. You were advised that a Healthcare NZ support worker could be made available to assist your husband with things such as toileting, showering, cleaning and rehabilitation. A support worker from Healthcare NZ visited initially, but your

husband was reluctant to accept assistance from a stranger and you told the healthcare authorities that he did not want somebody who he did not know caring for him.

[7] Initially, you all lived at a community owned house in Vine Street in Mangere. A number of people visited the house to see you and your husband. They often found that your husband was the only person at home, that on occasion he was hungry and that he looked unwell and untidy. Some said there were smells – one witness said of urine – in the house. Another witness said that when she visited, the house was locked and your husband was inside. She had to get her son to climb in through the window so that they could gain access to the house. Your husband then complained that you had left in the morning and that he had not eaten. On one occasion one of your husband's cousin's visited the house. She gave evidence that your husband told you that he needed to go to the bathroom, that you did not help him and that he ended up soiling himself. She said that you became angry at your husband, left him alone in the toilet and called one of your daughters to come and clean up after him.

[8] In addition to his strokes, your husband had other comorbidities. He suffered from serious diabetes, high blood pressure and kidney failure. His condition deteriorated markedly after his second stroke. He had to be assisted to get from the bedroom to the lounge; he had to be fed; he had to be toileted and cleaned; he needed help to take his medications. It is clear that your husband was highly vulnerable.

[9] You and your family moved to a property in Kivell Close, Mangere, in early 2016. Various family and church members visited you and your family at the property. You would on occasion tell visitors that they could not see your husband, saying, for example, that he was asleep or that he had been visited by his doctors and was receiving treatment. Some visitors did manage to see your husband. They observed that he was always seated in a La-Z-Boy chair, that he looked skinny and that he smelt of urine. The room in which your husband spent most of his time started to smell. It was described as smelling of faeces and urine. In about September 2016, your husband was visited by two people from his church. They said that he was unable to talk. They commented that the room your husband was in was dirty. One witness said that the room smelt of someone who was sick. The other said that the smell was like “flesh that had been rotting” or “meat that is not good”.

[10] You were your husband's primary caregiver throughout. Your daughters assisted, but they were only teenagers at the time. Both gave evidence at trial. One said that you spoke to them after it became clear that you were going to have to look after your husband yourselves. You told them what was required, how to look after him and the warning signs to look out for. You told them about pressure sores and the need to move your husband regularly. The other daughter initially denied having any discussion with you but later accepted that you did tell them what they needed to do to care for him, how to take him to the bathroom, how to shower him and the like. She also said that you told them about the importance of exercising him and that it was important not to keep him sitting in one place for too long because he could get sores.

[11] Various witnesses said that they offered to help but that you declined their offers.

[12] At one point, you advised Taikura Trust that you would act as a caregiver for your husband if you could be paid. You were told that you were not eligible to receive any funding as a support worker for your husband while you were living with him.

[13] On 29 January 2016, a Healthcare NZ coordinator visited you and your husband at Kivell Close. You advised that you were no longer living with your husband but that you were prepared to be his support worker. A further service plan was prepared and discussed with you. The plan included the provision of assistance for your husband, including moving him from the bed to the shower, showering and washing him, assisting with daily exercises and assisting with toileting. You were initially paid for providing care, but in April 2016, further funding was put on hold because it was discovered that you were still living permanently with your husband. Thereafter you were not being paid but you nevertheless remained the primary caregiver for your husband.

[14] Your husband was initially a registered patient at a medical clinic in Hillsborough. Your husband's doctor saw him only three times between December 2014 and May 2016. He should have been seeing her much more regularly. The doctor tried to contact both you and your husband. She left messages but they were not returned.

[15] Your husband was then transferred to a medical clinic in Mangere. Nurses from that health care centre tried to arrange home visits with your husband. They could not however make satisfactory arrangements and no home visits occurred. Records from the medical centre show that your husband was never seen by a doctor from the Mangere Health Centre.

[16] On 1 October 2016, the day before your husband died, his aunt and cousin visited him. They described the smell in the bedroom – one said it was “really disgusting” and that it smelt like a “dead animal”. The other said it smelt of “piss” and “dirty piglets”. The carpet in the bedroom around the La-Z-Boy chair was soaked. The aunt asked you several times if she could wash and bathe your husband that night. You refused to let her do so but said that she could come back and bathe him the following morning.

[17] At approximately 1.45am on 2 October 2016, you called 111 and reported that your husband had passed away. Ambulance officers arrived shortly thereafter and confirmed that your husband was dead. The police were then notified. Your husband’s body was found in the La-Z-Boy chair in the bedroom. The police conducted a preliminary examination. They smelt urine and faeces in the bedroom. They found medication at various locations and a black plastic bag containing soiled and maggot-infested clothing. They observed a stench of urine and decay when they moved a mat on the floor and a wet stain on the floor. A mouse ran out of the La-Z-Boy chair when it was moved. They also found mouse droppings and a rodent’s nest in a cupboard next to the chair. They found a green and grey top with what the police officer thought were strips of skin attached to it.

[18] A pathologist visited the scene shortly thereafter. She observed that your husband was in poor physical condition with relative emaciation. His skin had embedded dirt and his nails were long and dirty. His umbilicus was crusted and oozing and a maggot pupa case was found on the side of his hip. He had experienced significant weight loss – going from 148 kg to approximately 67 kg over a period of nine months. His back, arms, legs and the side of his torso had multiple deep and extensive pressure ulcers. Large wounds were found on his buttocks.

[19] A post mortem examination was completed on 3 October 2016. The pathologist noted the extensive bed sores. They had been caused by prolonged pressure on his skin. Some of the bed sores had developed to become deep pressure ulcers. The worst wounds were around the buttocks. In one wound, there was almost total death of the skin and your husband's muscle and bone were exposed. The wound was contaminated with faecal matter. The pathologist concluded that your husband had died from sepsis, due to the infected pressure wounds on his sacrum and buttocks.

[20] A medical specialist was called by your defence team. He noted your husband's poor underlying health and his various comorbidities. He considered that once the pressure sores became infected, nothing could be done to assist him and that he would have succumbed to infection very quickly.

[21] There was some disagreement between the Crown pathologist and the expert called by you as to the age of the pressure sores. The pathologist said that there was no firm evidential basis on which to give an accurate timeframe for the development of the ulcers. She did however give broad timeframes – she said that the extent of ulceration seen on your husband's body was unlikely to have developed over minutes or hours although she did agree that pressure sores can start and come on very quickly. She considered that your husband's ulcerations would have taken more than six hours to develop, and that the more significant ulcers would have taken “a great deal longer than six hours”. The expert called by you expressed the view that your husband could well have developed the pressure sores found on his body very rapidly – within a period of 24 to 48 hours before his death. He considered that your husband did not move from the time that he first started to develop the pressure sores and concluded that he must have suddenly stopped moving and ended up with the pressure sores, which quickly became infected.

[22] When you were spoken to by the police, you said that you first saw a wound on your husband's buttocks the day before his death but that at that point it was not very big. One of your daughters denied seeing any sores on her father; the other said that she saw a red mark or rash on his body a day or two before he died.

Pre-sentence report

[23] You were interviewed by audio visual link whilst in custodial remand. You are from Tonga and you reported that you had a good upbringing in that country, growing up as the youngest of eight siblings. With the exception of one brother and one sister who live in New Zealand, the rest of your siblings are still in Tonga. Your parents have passed away but you have enjoyed a positive relationship with most of your siblings.

[24] You told the report writer that you had a good marriage and that your late husband was a good man. However, you did say that he was a hard man, in charge, and that he bossed you and your daughters around. You said that the family was used to complying with his decisions.

[25] You told the report writer that you were not aware of the severity of your husband's situation as he did not tell you that he was in pain and because he refused to go and see a doctor. You regretted your offending, saying that you should not have listened to him and that you were sorry for that. When you were asked if you should have used the knowledge you had learnt from the course you attended on how to care for aged and disabled persons, you advised that you had only ever provided care for two clients after that course and that both were independent. You became emotional and teary when discussing your husband's death and said that you miss him, because you loved him.

[26] The reporter writer considered that your explanation for your offending showed limited insight. It was noted that you regret your current predicament and the death of your husband due to your "wrong choice of actions". The report writer recommended that a sentence of imprisonment should be imposed.

Mr Kirker's report

[27] Mr Kirker, a clinical psychologist, interviewed you on 23 November 2021. He also interviewed your daughters. Unfortunately, his interview with you took place by way of virtual meeting room, given the Covid-19 restrictions. He noted that you had an uneventful upbringing in Tonga, that you were raised as a Christian, with pro-social

values. You reported to Mr Kirker that your husband could be difficult and dominant but you stated that you loved him and that you miss him.

[28] You reported a number of health issues. In 2016, you were hospitalised. You had two operations due to kidney problems and related complications. You are troubled by hypertension, anaemia and obesity. You reported that at the time of your husband's death you were preoccupied with your own health problems. You also stated that you could not have persons from outside the family assist, as that went against your husband's express wishes. Your health problems impacted your mobility and capacity for physical activity such as bathing your husband. You also advised that you were experiencing psychological issues at the time, and stress arising from your physical health issues.

[29] You expressed no spontaneous remorse or regret about what happened. When you were asked if you would do things differently if you had your time again, you indicated that you would have stood up more to your husband and would have involved external supports for him, for you and for the family. You took the view that you had not done anything criminally wrong and you considered that it is unfair that you are in prison. You thought that you did your best at a difficult time in your life.

[30] Mr Kirker reported that it seems likely that you were desensitised to smell, uncleanliness and other signs that your husband's basic needs were not being met. He considered that it is likely that you experienced a degree of helplessness and hopelessness, which contributed to a focus on your own suffering and impaired your motivation at the expense of your husband's needs. He considered that you were in denial about some of the realities of your husband's situation and that you are now struggling to accept your role in his death.

Section 27 report

[31] I have received a helpful s 27 report prepared by Shelley Turner, a director of Specialist Reports Ltd.¹ She also interviewed you via virtual meeting room. She reviewed your background and suggested that there is little in the way of offending

¹ Sentencing Act 2002, s 27.

causative factors in your early life. There was no violence or dysfunction in your childhood home and you had a Christian upbringing. Again, you advised Ms Turner that you loved your husband. You repeatedly referred to him in the course of the interview as a good man but also “a hard case”, by which you meant rather stubborn.

[32] Ms Turner considered that there were several interconnected factors that impacted on your ability to care for your husband. She referred to cultural aspects, poverty and your ill health and declining physical capacity.

[33] In regard to cultural aspects, she noted that both you and your husband were born and raised in Tonga and that Tongan society has a hierarchical culture, organised with asymmetrical relationships. She noted that women in Tonga are generally held in high regard but that, within the confines of a marriage, the husband holds authority. It is expected that a wife will conform with her husband’s will, and she referred to the evidence at trial that your husband was adamant that he did not want external caregivers. She noted that as a result, your daughters were forced to step forward, creating shame for the family because their actions in caring for their father crossed cultural taboos, further entrenching the refusal of outside help through the shame of your situation.

[34] Ms Turner also noted that your family was forced to live in a single bedroom within a larger family home and that at the time you were living in squalid conditions with little income. She noted that following your husband’s strokes the family lived solely on your part-time wages, but then you became unwell and were forced to stop work. When that happened, one of your daughters left school to support the family. Nevertheless, money was still short and some months later your other daughter left school to further help support the family. There was little money available for food and basic services.

[35] Finally, Ms Turner dealt with your own health and your declining physical capacity. She noted the significant health issues you suffered from through 2016, that you were in pain and that eventually you had two nephrostomy tubes with external bags fitted to collect fluid from your kidneys. Movement was difficult and painful for you.

[36] Ms Turner reported that you spoke of “huge regret” about your inactions and about what you wished you had done, but did not do. You advised Ms Turner that you have “learned [your] lesson” and that you know that what you did was wrong. Ms Turner considered that you are clearly ashamed of your offending and that the implications for you and your standing within the family and your community have been significant.

Letters/Victim impact statement

[37] Your daughters have not provided victim impact statements, although both spoke to Mr Kirker and Ms Turner spoke to one of them. They have also written a letter supporting you and explaining that you are the backbone of the family. Mele Latu, a mental health counsellor with the Tongan Health Clinic, has written to me about the effect of your offending on your daughters, as has Inoke Masima from Fonuaola – an organisation helping Pacific families.

[38] In addition, I have received three letters in your support – from Pelenaise Vao, from Fakakolua Kutu and from the Reverent Nehilofi ‘Aholelei of the Auckland Manukau Tongan Methodist Parish. All describe you as a loving and caring person who made a contribution to your community.

[39] The Crown sought permission pursuant to s 21 of the Victims’ Rights Act 2002 to submit a statement from your husband’s cousin, Manusiu Luani. At trial she gave unchallenged evidence that she was very close to your husband when he and she were growing up, describing him as like a “brother.” She and your husband were raised in the same household in Tonga by her mother – your husband’s maternal aunt. Ms Luani was one of the persons who visited your husband on the evening before his death and she returned in the early hours of the morning when she became aware that he had passed away. The application to present Ms Luani’s victim impact statement was not opposed by Mr Ryan, acting on your behalf. I allowed the statement to be put before the Court.

[40] Ms Luani’s statement is made on behalf of the extended family in New Zealand, Australia and Tonga. It does not express hatred but rather is written with “heart felt emotion” for the deceased. Ms Luani cannot explain the pain and aching

in family members' hearts, knowing that your husband was, in her words, "mistreated". She says that it is "very unbelievable" that you could do such things to him and that he is missed by all family members.

Submissions

[41] Mr Rhodes, for the Crown, referred to the relevant purposes and principles of sentencing, to the victim impact statement and to the underlying facts of your offending. He argued that the offending had various aggravating features and he referred to the case of *R v Taylor*, both in this Court and in the Court of Appeal.² He noted that in that case the starting point was one of 12 years' imprisonment for similar offending. He submitted that your offending bears a number of similarities to the offending in *Taylor*. He submitted that in some respects your offending was worse, but he acknowledged that some of the features in *Taylor* are missing in your case. Overall, he submitted that your case also warrants a starting point of 12 years' imprisonment.

[42] He accepted that there are various discounts which are open to you. But he argued that those discounts should be limited.

[43] Mr Ryan, on your behalf, submitted that a starting point of 12 years is too high. He accepted some of the aggravating features suggested by the Crown, but denied others. He emphasised that the expert evidence at trial confirmed that the pressure sores which became infected and resulted in the sepsis which caused your husband's death were only present for a relatively short period of time, somewhere between one and three days.

[44] Mr Ryan suggested that there are significant differences between your case and that of the defendant in *Taylor*. He noted that the victim in *Taylor* was otherwise in good health, whereas your husband had suffered two strokes and had other serious comorbidities affecting his life expectancy. He submitted that the appropriate starting point for you is one of eight to 10 years' imprisonment.

² *R v Taylor* [2016] NZHC 2846; *Taylor v R* [2017] NZCA 574.

[45] He then turned to consider mitigating factors in relation to the offending and submitted that the health providers should have made more of an effort to communicate with you and your husband and should have carried out better checks to observe your husband's progress.

[46] Mr Ryan also dealt with mitigating factors personal to you. He referred to a letter of remorse which you have sent to me. He referred to Mr Kirker's report and also to Ms Turner's s 27 report. He noted your prior good character and submitted that the available discounts should be in the range of 50 per cent.

Purposes and principles of sentencing

[47] In sentencing you, I have considered the principles set out in ss 7 and 8 of the Sentencing Act 2002.

[48] I have had regard to the need to hold you accountable for your offending, the need to promote in you a sense of responsibility for and an acknowledgment of that offending, and, importantly in this case, the need to denounce the conduct in which you were involved. I have also been mindful of the need to deter others from committing the same or similar offences. I have taken into account the gravity of the offending with which you were involved, including your culpability. I have considered the seriousness of such offending, and the general desirability of consistency of appropriate sentencing levels between similar offenders committing similar offences. I have been mindful that I must impose the least restrictive outcome that is appropriate in the circumstances.

[49] I have had regard to the relevant aggravating and mitigating factors identified in s 9 of the Act, and in particular, s 9(2)(f) – dealing with remorse.

Analysis

[50] There is no guideline case for manslaughter sentencing. The factual circumstances in cases vary significantly and only limited guidance can be gleaned from them.³ Rather, culpability falls to be assessed in light of the circumstances of

³ *R v Bennet* CA457/03, 23 September 2004 at [68].

each case. The ultimate question, in any given case, is what sentence meets the facts before the Court.

[51] In my view, your culpability is relatively high and your offending was serious offending of its kind. Your culpability is not however as high as that of the defendant in *Taylor*. Nor was your offending as serious as that in *Taylor*.

[52] There are nevertheless a number of aggravating features to your offending.

- (a) First, there was your husband's vulnerability. I acknowledge that vulnerability is inherent in the offending and I have been careful not to "double count" it. I accept that you did not cause your late husband's vulnerability. He had pre-existing comorbidities and he had suffered the strokes. Nevertheless, when he was finally discharged from hospital and came back to the property at Vine Street, he was particularly vulnerable on account of his poor health and lack of mobility. His vulnerability increased as his condition deteriorated. His health was obviously declining. He was confined to his La-Z-Boy chair. He had no means of helping himself or even of obtaining help from others. His wellbeing and ultimately his survival became entirely dependent on you and on your young daughters.
- (b) Secondly, in my view, there was a gross breach of trust involved in your offending. You were the deceased's wife. You were assigned as his paid caregiver in January 2016 to look after him. While your remuneration for those services was subsequently stopped, you remained the deceased's primary caregiver until he died. He was entitled to place his trust and confidence in you to adequately care for him and to protect him insofar as was possible. You breached his trust by failing to provide him with basic requirements, in particular keeping him clean and moving him to ensure that he did not develop pressure sores.

- (c) Thirdly, there is the extent of the harm suffered by your husband. It could not have been more serious. He died as a result of your offending. The pressure sores, particularly in the area of his sacrum and in the buttocks region had been present for somewhere between one or two or perhaps three days prior to his death. You were aware of some of them. You were aware of the risk that pressure sores could develop if appropriate steps were not taken. You told your daughters about those risks.
- (d) Fourthly, there is the extent of your neglect. I have already referred to the pathologist's evidence as to the state of your husband when his body was found. He died slumped in his armchair, in his own faeces and urine with parts of his skin fused to the chair. Your neglect of your husband started well prior to his death. He was frequently left home alone, unable to communicate or to move. He was left with plastic bottles to urinate in. On occasion, he defecated himself. He was washed and bathed infrequently. You failed to obtain sufficient medicine for him. You did not take him to medical appointments. You rejected offers of help from friends and family. You actively discouraged people from visiting him. You refused to accept available support from Healthcare NZ and the Taikura Trust. As a result, your husband became increasingly isolated. He stopped eating. He had more frequent accidents toileting and his ability to speak deteriorated. You told others that he was going to die and that there was nothing that could be done about it. Your training, albeit limited, and your work experience must have alerted you to the level of care that was required. Basic standards of care were not observed. Had basic care been provided the situation that developed might well have been avoided. You cannot have been unaware of your husband's deteriorating state.

[53] There are however mitigating features to your offending.

- (a) First, the evidence at trial suggested that your late husband was "a hard man" who insisted on getting his own way. He did not want to be taken

to the doctor and he told you that in firm terms. This does not excuse your failure to obtain medical assistance as his condition worsened but it does help explain matters and it goes to reduce your culpability.

- (b) Secondly, there were cultural factors in play. Within the confines of marriage, in Tongan culture men hold authority. Your husband did not want to be cared for by a stranger. Notwithstanding cultural taboos, he wanted to be looked after by you and by his daughters. Because you were breaching cultural taboos by having your daughters help look after him you became more isolated from your community and less able to seek help.
- (c) Thirdly, poverty and overcrowding were undoubtedly contributing factors. The family at the time was impoverished. You, your husband and your two daughters shared the same bedroom in the Kivell Close house. There were others living in the house and still more people living in the garage. The house was poorly maintained. A number of appliances that could have been used to prepare proper food did not work. You resorted to take-aways. Vermin, in particular rats, were observed in the house from time to time. There was a hole in the lounge ceiling.
- (d) Fourthly, you were in poor health yourself for at least part of the time. At one point you were hospitalised. I accept that this must have significantly compromised your ability to properly care for your husband.

[54] I accept that there is a causal link between these various factors and your offending. They would have led to and added to your desperation and feelings of helplessness. In my judgment, they serve to reduce your culpability.

[55] I do not take into account the role taken by the various health care authorities. While it is arguable that they could have done more, they did offer to provide

assistance but ultimately they were turned away by you. Help was available but you, acting on the instructions of your husband, chose not to take advantage of that help.

[56] In fixing a starting point sentence for your offending, I have considered primarily the case of *R v Taylor*. I was the trial Judge in that case. In sentencing, I considered a number of overseas authorities and various other authorities dealing with broadly similar offending in this country. I found that the defendant's culpability was very high and that her offending was very serious offending of its kind, warranting a high starting point. I considered that she was directly responsible for her mother's death. There were no mitigating factors relevant to the offending and I imposed the starting point of 12 years' imprisonment for what I considered to be gross neglect and a high level of culpability. The Court of Appeal upheld the sentence I imposed. It observed as follows:

[22] ... The abhorrent conditions in which [the deceased] was kept without pain relief, medical care or the most basic sanitation are comparable to physical assaults. This was as bad a case of sheer neglect causing death as could be imagined. A starting point of 12 years' imprisonment was within the range available to the Judge, albeit at the upper end of that range.

[57] As I have already noted, in my judgment, your offending was not as serious as that in *Taylor*. While there are aggravating features to your offending, there are also mitigating factors which, in my view, reduce your culpability. Your husband did not suffer other serious painful injuries prior to his death and he had serious underlying health issues.

[58] Considering all of these matters in the round, in my view your offending attracts a starting point sentence of eight years' imprisonment.

Personal factors

[59] I now turn to consider whether there are any aggravating or mitigating factors personal to you.

[60] There are no personal aggravating factors insofar as I am aware.

[61] There are however mitigating factors.

[62] First, you are 53 years old. You have no previous convictions and your risk of reoffending is considered by all who have interviewed you to be low. A number of persons have written to me telling me of your good character and of the contribution you have made over the years to your community. You are entitled to a discount for your previous good character. I allow you a discount of 10 per cent for this factor.

[63] Secondly, and as I have already noted, there was evidence led at trial that you suffer from your own health issues and this has been confirmed in the additional reports I have now received. I have already taken these matters into account in fixing the starting point. Mr Ryan and Mr Tupou have confirmed that your health difficulties are ongoing. While it appears that you are coping reasonably well with the custodial environment at present, you explain in your letter to me that being in prison is not easy for you. I can understand that and I accept that a custodial sentence is likely to be appreciably harder for you than it would be for other offenders. I allow you a further discount of 10 per cent to recognise this.

[64] There is then the issue of remorse. There are differing views expressed by the various people who have interviewed you in regard to your offending. The pre-sentence report writer considered you have only limited insight into your offending. Mr Kirker noted that you have expressed no spontaneous remorse and that you believe that you have not done anything criminally wrong. However, Ms Turner reported that when she discussed remorse with you, you became visibly upset and spoke of your huge regret.

[65] You have written a heartfelt letter to me. In that letter you express remorse. You accept full responsibility for your actions and tell me that you accept in full the jury's verdict. You ask for forgiveness. Notwithstanding the views of some of the report writers, I accept that you have belatedly expressed genuine remorse. I allow you a further discount of 10 per cent for that remorse.

[66] I do not consider that you are entitled to any discount for the fact that you were on bail for a lengthy period pending trial. It was bail simpliciter and given your poor health, there were no conditions which restricted your activities at all.

[67] It follows that I am prepared to allow you discounts totalling 30 per cent or 29 months (with some rounding) from the starting point sentence I would otherwise impose.

Sentence

[68] Ms Li, will you please stand.

[69] Ms Li, in respect of the offence of manslaughter, I sentence you to 5 years and seven months' imprisonment.

Minimum period of imprisonment

[70] I am empowered to order that you serve a minimum period of imprisonment in relation to your conviction for manslaughter. I can do so in certain circumstances which are set out in the Sentencing Act.⁴

[71] I accept that there is no need to impose a minimum period of imprisonment to deter you from further offending nor to protect the community from you. I did consider whether a minimum period of imprisonment is necessary to hold you accountable for the harm to your husband and to the community, or to deter others from committing the same or a similar offence. The Crown did not seek a minimum period of imprisonment and the sentence I have imposed upon you is in my judgment sufficient to hold you accountable and to deter others from like offending. I have concluded that a minimum term of imprisonment is not necessary in your case.

[72] Ms Li, you may stand down.

Wylie J

⁴ Sentencing Act 2002, s 86.