

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

**I TE KŌTI MATUA O AOTEAROA  
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE**

**CRI-2021-070-4336  
[2022] NZHC 1555**

**THE QUEEN**

v

**MICHAELA BARRIBALL  
SHARRON BARRIBALL**

Hearing: 30 June 2022

Counsel: A J Pollett and P-F Lee for Crown  
R M Adams for M Barriball  
C A Harold for S Barriball

Sentence: 30 June 2022

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**SENTENCE OF PAUL DAVISON J**

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Solicitors:  
Crown Solicitor, Tauranga  
Adams Law, Tauranga

## Introduction

[1] Michaela Barriball you are 27 years old.<sup>1</sup> You appear before the Court today for sentence having pleaded guilty to one charge of murder,<sup>2</sup> one charge of injuring with intent to injure<sup>3</sup> and two charges of ill-treatment of a child.<sup>4</sup> Your offending caused the death of Malachi Rain Subecz, a five year old boy.

[2] Your offending, Sharron Barriball, is that of attempting to prevent the course of justice.<sup>5</sup> You have plead guilty to the charge. You are Michaela's sister. You are 37 years old.<sup>6</sup> Your offending also relates to events behind and in the context of Malachi's death.

[3] There are a number of Malachi's immediate and extended family present in Court this morning. It is clear that all of Malachi's family and whānau are deeply affected by grief from the tragedy of his death. I commence my remarks this morning by extending the sympathy of the Court to Malachi's family, for their loss.

[4] Whenever a young child dies, and particularly in circumstances such as this, not only does the immediate family grieve, but the whole community does too. Malachi was a member of our community. As members of society, we all have a responsibility for those among us who are especially vulnerable and who need special care and protection. All children in the care and custody of adults should be entirely safe and secure at all times. It is a tragedy that Malachi's life was taken from him by the actions of the person responsible for his care and protection, and a person who was entrusted with and expected to discharge that responsibility.

[5] So in sentencing you today Michaela, the Court must hold you accountable for what you have done, for the life you have taken, and to send a clear and emphatic message to the community that there is no tolerance whatsoever for violence of any kind against children, and that the Court can be expected to reflect community

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<sup>1</sup> Michaela Barriball, born September 1994.

<sup>2</sup> Crimes Act 1961, ss 167 and 172: carrying a maximum penalty of life imprisonment.

<sup>3</sup> Section 189: carrying a maximum penalty of five years' imprisonment.

<sup>4</sup> Sections 152 and 195: carrying a maximum penalty of 10 years' imprisonment.

<sup>5</sup> Section 117: carrying a maximum penalty of seven years' imprisonment.

<sup>6</sup> Sharron Patricia Mereama Barriball, born September 1984.

expectations and standards, and impose a stern punishment upon anyone who offends in that manner. In your case, your offending being the murder of Malachi.

[6] Michaela, the sentence I impose upon you today will be one of life imprisonment. That is the stipulated sentence for murder, unless it would be manifestly unjust to impose such a sentence.<sup>7</sup> There can be no suggestion that life imprisonment would be unjust in this case and life imprisonment is the sentence I will impose. The principal issue I must decide today is the number of years that you must serve before you will become eligible for parole. This is called the minimum period of imprisonment or “MPI”.

[7] Your sentencing engages s 104 of the Sentencing Act 2002. That section prescribes that a minimum period of imprisonment of at least 17 years be imposed for murders of the most serious kind, including those where the deceased was particularly vulnerable by reason of his or her age.<sup>8</sup> Both counsel agree that s 104 is engaged in your case. Malachi was five years old and in your care. His murder warrants a minimum period of imprisonment of at least 17 years unless it would be manifestly unjust to impose that. The Crown submits that an MPI of between 18 and 19 years’ imprisonment would be appropriate. On your behalf, Ms Adams submits that an MPI of 17 years is appropriate.

[8] Sharron Barriball, your sentencing today will be comparatively straight forward. On your behalf, Ms Harold, submits that a starting point of 15 months’ imprisonment is appropriate with discounts totalling 35 per cent. She submits that the end sentence for you ought to be one of home detention. The Crown agrees that a sentence of home detention is appropriate in your case, provided that a suitable home detention address is available.

[9] I shall commence by sentencing you Michaela before turning to sentence Sharron.

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<sup>7</sup> Sentencing Act 2002, s 102.

<sup>8</sup> Section 104(1)(g).

## **Background**

[10] I will start with a summary of the offending. Michaela you are of course well aware of the details of your own offending and some of this information may by now also be known to members of Malachi's immediate family. Hearing these details of the manner in which you abused Malachi both physically and emotionally over an extended period prior to finally causing his death will inevitably be distressing especially to his whānau and immediate family, but sentencing is a public function carried out for and on behalf of the public, and it is therefore necessary for me to describe your offending in some detail as the basis for my assessment of the gravity of your offending which will inform my decision as to the appropriate minimum period of imprisonment I will impose on you.

[11] Malachi was born on 28 September 2016. When he died on 12 November 2021, he was just over five years old.

[12] On 22 June 2021 Malachi's mother was imprisoned, and at her request Malachi was placed in your care, Michaela. You willingly agreed to this arrangement and of taking responsibility for his care and protection during the period while his mother was herself unable to care for him.

[13] On 13 September 2021 these care arrangements were formalised in the Tauranga Family Court, with you being temporarily appointed as an Additional Guardian, pending a full hearing regarding his guardianship scheduled to be heard on 1 November 2021. In that Family Court proceeding you were opposing applications made by members of Malachi's immediate family who were themselves seeking custody and guardianship of him.

[14] On 3 September 2021 a relocatable cabin was placed at the rear of your family's address in Tauranga. Malachi and you commenced living in the cabin together.

[15] At the time you were in a volatile relationship with your partner. He is an overstayer in New Zealand and was hoping to gain residency in New Zealand on the basis of his relationship with you and your role and responsibilities for caring for

Malachi. Your brother resided in a caravan at the family address, and his three children, aged between five and 10, resided in the main house there with your father. The cabin in which you and Malachi were living had electricity but no running water. This meant that you and Malachi used the bathroom and ate your meals in the main house. At the time the arrangements were made for you to care for Malachi you were unemployed, but arrangements were then made for you to receive money each week from the Ministry of Social Development, to assist you in taking care of Malachi.

[16] However, rather than taking care of him, soon after he was placed in your care you started physically abusing him. You assaulted him on what must have been an almost daily basis, slapping him on the face, head and body. You would also push him up against and into walls and onto the ground. When other adults within the home tried to intervene to stop this sort of behaviour you would ignore them, insisting that you had the responsibility for being his parent and that you did not care what they thought. During this time Malachi was overheard telling you that he did not want to live there with you anymore.

[17] No doubt as a reaction to the mistreatment he was being subjected to, Malachi began soiling himself. But instead of taking any steps to address this in a positive way your reaction was to punish him. When it occurred you would strip him down to his underwear and lock him out of the house or put him in your vehicle outside the house. You frequently feigned kicking or punching him with a closed fist as a means of threatening him to do what he was told, saying "I'm gonna punch you in the face soon". You also punished Malachi by making him stand for lengthy periods, including while he watched a movie as you rested or slept. He was only permitted to sit down when you allowed him to.

[18] You also failed to feed and nourish Malachi properly and give him sufficient food to eat. On some occasions no doubt because he was hungry he would eat quickly, leading you to get angry at him and causing him to vomit. You would sometimes pull him away from the dining table before he had finished eating in order to take him out to the cabin to discipline him. The extent to which he was malnourished during the time he was in your care is evident from the fact that when he died on 12 November 2021, he appeared skinny and underweight. In fact he weighed just 16 kilograms. The

same weight recorded at a medical appointment he had attended in November 2019, when he was just three years old.

[19] On 24 September 2021 you took Malachi for a visit to Te Puna Primary School. This was the only occasion he was taken to the school. Although he was scheduled to commence attending school on 18 October 2021 you failed to take him on that day or ever.

[20] On an occasion shortly after his fifth birthday on 28 September 2021, you were alone in the cabin with him. On that occasion you grabbed Malachi by his hair and lifted him up off the ground. He was trying to get away from you, flailing his legs in a running motion. You then threw him against a wall, causing him to fall on the floor on his back, crying. You then picked him up by the hair again and threw him against another wall, this time causing him to fall with his back across a bed frame. You then stood over him and struck him in the face repeatedly with an open palm.

[21] On 12 October 2021, you sent your partner a series of text messages summarised as follows, and saying:

- (a) Malachi had almost urinated himself.
- (b) You hated his guts.
- (c) 'I'm more scared I'm gonna kill him if he don't watch it - seriously'.
- (d) 'This is why I don't have any kids yar I'm thinking too much but it's the truth'.
- (e) 'I'll never be a good mum'.
- (f) 'Yea everyone always sorry for him but not for me. I'm gonna fuck him up badly ugly cunt taking my all everyone from my life g'.
- (g) 'You like him more then [sic] me yar that's not fair he's taking everyone from me the ugly fucker'.

- (h) 'I'm dropping this nigga too [sic] you'.
- (i) 'I don't want him here or near me'.
- (j) 'He's again piss and shit himself'.
- (k) 'I can't handle him - seriously'.
- (l) 'I think I kill him yar'.
- (m) 'He not breathing'.
- (n) 'Yaaaar fuck he's not breathing yar'.
- (o) 'I'm being honest it's not a joke'.
- (p) 'Ambulance coming'.
- (q) 'And Police'.
- (r) 'I hope you find someone who will be good for your life'.
- (s) 'I'm fucked now'.

[22] However, no calls were made to Police or Ambulance from the address on that date.

[23] Also during this period there was an occasion when Malachi was having a bath and you grabbed the hair at the back of his head and held his head under the water face down, completely submerging his mouth and nose. When you allowed him up for air he asked you to stop. But you forced his face under the water again. You then lifted him out the bath and took him out into the cabin where you were heard yelling while Malachi was screaming.

[24] On 27 September 2021 you dropped Malachi to a day care facility in Tauranga. Malachi's hairstyle had been changed, with his fringe pulled over his forehead. Staff at the day care centre noticed that he had a number of visible injuries. He had multiple blunt force trauma injuries to his head caused by you including a cluster of bruises under his chin, a scratch on his left mandible (chin), a large swelling on his forehead (which his hair had been pulled over), and a progressively blackening left eye.

[25] When you were asked by staff at the day care centre about these injuries you explained that Malachi had fallen off his bike and had also fallen in the weekend. However, when the staff asked Malachi if he had fallen off his bike, he said "No". Twice when they were attending to Malachi's injuries, he told the day care centre staff that you were going to be mad at him.

[26] On Malachi's fifth birthday, 28 September 2021 and the following day 29 September you took him to day care. However, although he had been booked in to attend the centre through until 15 October 2021 shortly before he was to start attending school you did not take him back there again after 29 September. Day care staff describe Malachi as being a normal child, who was not accident prone, and was toilet trained.

[27] On 18 October 2021 the school term started. That day, your father went away for a holiday for some eight days. On that day Malachi and the other children who were left in your care were absent from school. Sometime before 9.40 am that day, Malachi soiled himself and was given a "growling" by you. You then put him in the shower in the main house and turned the hot water on.

[28] The hot water temperature at the showerhead has been measured as being 73 degrees centigrade. The showerhead was plastic coated with chrome plating and able to detach from the holder. When the hot water is left running the temperature of the showerhead itself has been measured as reaching 73 degrees centigrade, the same temperature as the water.

[29] While in the shower on that occasion Malachi suffered burns to his abdomen, shoulder and forehead. The abdomen burn he suffered was an irregularly shaped,

large, deep, and blackened injury extending approximately 13 centimetres over a large part of his abdomen and appeared to have been caused by an object being pressed into his skin. The shoulder burn was shaped in a pattern consistent with being caused by hot water. Malachi also had a burn on his forehead. This burn is described as being about the size of an adult finger and is located near his hairline, and appears to have been caused by a circular object being pressed onto the skin. Expert medical evidence determined that these burns were the result of separate acts.

[30] You then carried Malachi from the shower and left him screaming on a sheet in the lounge of the house. That same day you sent your partner a series of text messages which are summarised as follows, by you saying:

- (a) 'I don't know what to do for this boy yar'.
- (b) 'He's in to[sic] much pain and can't take him to hospital'.
- (c) 'I can't take him [to] hospital they gonna think I beat him and I don't even touch him'.
- (d) 'I don't know what I should do yar buggi'.
- (e) 'I'm so fucked if at him yaar'.
- (f) 'He should be in hospital'.
- (g) 'Nhi he just quiet on the couch'.
- (h) 'But looks soo [sic] sad'.
- (i) 'Aho I'm ok his mum asking for video call but when she ring then I'll say her no data'.
- (j) '2 weeks then final hearing'.

[31] You told your partner that you had given Malachi paracetamol and asked your partner to buy some arnica cream. You said that you were going to put Malachi in cool water with cling wrap on him.

[32] Then on 19 October 2021 you sent your partner a further series of text messages summarised as follows, saying:

- (a) 'Fuck man I'm not much anger on this boy and I can't calm myself but I'm trying I just wanna take him hospital I don't care if I go jail yar I deserve to'.
- (b) 'Yeah I'm just trying to do his sores yar'.
- (c) 'I'm gonna kill that cunt if I ever see his ugly duckling face again'.
- (d) 'Winz give me money for gas I'm taking this fucker back to Wellington today. And you can leave me alone as well. You telling me go a ring the cops on me?'.

[33] You also text messaged your sister, Sharron that day saying: 'I wanna take him to hospital but I'm fucking scared asf man'.

[34] Then on 20 October 2021 you also sent your father a series of text messages that included messages saying:

- (a) 'aven't taken him to hospital cause [Michaela's partner] told me not to cause of the bruises on his face from bumping into shit would make it look bad for me'.
- (b) 'I just don't wanna get in trouble that's all'.

[35] Your father messaged you to take Malachi to the doctors. You replied saying 'Yeah I'm waiting for his bruises to go away from his face cause they not gonna believe me if I tell them he walks into stuff'.

[36] On 23 October 2021 you took Malachi to a family function which was being held at a restaurant in Mount Maunganui. Malachi was in obvious pain on that occasion. You are recorded on CCTV carrying him into the restaurant with the hood of his sweatshirt pulled down over his head and the fringe of his hair pulled forwards over his forehead. When Malachi left the restaurant he was hunched over and walking slowly. Several family members observed the by then scabbed burn injury on Malachi's forehead and were concerned that he was being abused. When asked about it you assured them that he had accidentally burnt himself in the shower and had already been seen by a doctor, although in fact you had not taken Malachi to see a doctor about the burn at all.

[37] During October 2021, other than a brief visit to Whakatāne, you did not leave the Western Bay of Plenty. However you told your own lawyer, who in turn told the lawyer for the child who was representing Malachi and his interests in the Family Court proceeding, that you were locked down in Hamilton. You told Malachi's mother that as you had no data or Wi-Fi you were not able to make video calls. You also told her that you were locked down in Hamilton, and said that a car had run over the fibre box outside your address. As a result Malachi's mother was limited to making voice calls to him but was being told by you that he was attending the day care centre and everything was going well. You also emailed Malachi's school advising that you were in lockdown in Hamilton. A series of lies, after lies, after lies.

[38] However the reality was that Malachi and you were not locked down in Hamilton and you continued to occupy the cabin at the family address. Your partner at that time was living in his car and was periodically staying with you.

[39] On 25 October 2021 you sent text messages to your partner which are summarised as you saying:

(a) 'Yaar this boy dumb ass'.

(b) 'I take him inside the bathroom cause he need to go toilet'.

(c) 'He was there like half hour. Then I go look him his all shit in his hands and legs what should I do to keep myself calm from that tell me give me any solution I need help yar'.

[40] On 28 October 2021 you and your father took Malachi into a local Hauora health centre to request a letter from the doctor saying that Malachi did not have autism. This letter was to be used in the Family Court to support your case that Malachi was not in need of any special care, and so could therefore be cared for by you. At no time during this medical appointment did either you or your father mention the extensive burn on Malachi's abdomen. That burn on his abdomen was still only partly healed and very visible. In fact this wound was still deep and puckered when Malachi was examined by hospital staff after being taken to hospital by ambulance on 1 November 2021 some two weeks after the hot water burn injuries had been inflicted.

[41] Throughout October you frequently left him alone in the cabin until the early hours of the morning when you went off on your own out at night.

[42] On 31 October 2021 you took Malachi and your brother's three children trick or treating in Welcome Bay. Malachi was wearing a pirate hat that covered his forehead. Photographs of Malachi taken at about 7.43 pm that evening show that he had no facial injuries below his eyebrow level. After the trick or treating you took Malachi back to the house where he was described as behaving normally, including eating dinner before going to bed in the cabin.

[43] The following day, 1 November 2021 was the day on which the final Family Court hearing was scheduled to take place. That morning your partner left the cabin shortly before 7.00 am and went off to work leaving you and Malachi alone in the cabin together. After he had gone you messaged your partner saying that you would try to find some accommodation to live in with him and Malachi. You then contacted a number of landlords asking if they had accommodation available suitable for two adults and one child, saying you 'desperately needing something'. Those efforts were all unsuccessful.

[44] At approximately 8.30 am you carried Malachi from the cabin into the main house. Upon arrival into the house he was unconscious and suffering seizures. In the interval between your partner's departure for work that morning, and taking Malachi into the house in an unconscious state, he had been subjected to multiple blunt force trauma to his head which you had inflicted and which had caused what proved to be fatal injuries. When you arrived at the house your father attempted to revive Malachi by splashing him with water in the shower, before lying him on the couch.

[45] An ambulance was called, with both you and your father speaking to the 111 operator. You said that Malachi had fallen over while getting changed for school and had a fit. At about 8.45 am the ambulance arrived and the ambulance officers found Malachi flailing on the couch. During his flailing movements Malachi's abdomen became exposed and the abdominal burn injury was visible.

[46] When asked about the burn injury both you and your father said that Malachi had recently been clumsy and had turned the shower mixer to hot and had burned himself with hot water. However as I have earlier noted this burn wound had the appearance of being caused by a hot object pushed onto his abdomen and not caused by contact with hot liquid coming from the shower head itself. Malachi's left eye was found to be fixed and dilated, indicating to the ambulance staff the possibility of traumatic brain injury. He was first taken to Tauranga Hospital and then airlifted to Starship Hospital in Auckland. At about 1.00 pm that afternoon he had emergency surgery, was intubated, and placed into an induced coma.

[47] The Tauranga and Auckland hospital staff determined that Malachi was suffering from the following injuries:

- (a) Acute left-sided subdural haemorrhage (or bleeding) on his brain.
- (b) An extensive healing burn on his abdomen, and healing burns on his shoulder and forehead.
- (c) A blackening right eye (with no associated abrasion), indicating direct blunt force trauma.

- (d) A cluster of bruises under his chin.
- (e) Bruising on his left mandible, that is the left side of his jaw.
- (f) Bruising on his inner and outer left and right elbows.
- (g) Bruising and abrasions on his legs indicative of grabbing and fingernail cuts.
- (h) A cluster of bruises on his right upper hip.
- (i) A linear red mark on the right side of his back.
- (j) A cluster of bruises on the back of his left thigh.

[48] These facial injuries were similar to those observed on Malachi by the day care centre staff on 27 September 2021.

[49] Malachi was also found to be suffering from acute malnutrition.

[50] He was extubated on 10 November and died on 12 November 2021. He was as I have said, just over five years old. The autopsy performed later that day determined the cause of death to be due to blunt force head injury.

[51] In your statement to the Police you said that you had a great bond with Malachi and that he had been attending school since his fifth birthday (describing his school day routine). You said that on the morning of 1 November 2021 you and Malachi had got up at around 8.00 am to get him ready for school. You said that when you went into the bathroom of the cabin to get Malachi's toothbrush ready, you saw him reaching up with both arms on his tip toes to get something from the top of a set of drawers. You said that he then fell backwards, landing on his back and that his head landed on the carpeted floor. You said he had screamed and started shaking his right arm and leg for 'a couple of minutes'. You explained that when the shaking stopped, you carried him into the main house. You said that other than a graze on his forehead from trick or treating the night before you hadn't noticed any injuries or scars on him.

[52] You gave a series of differing explanations for Malachi's burns to various people:

- (a) You told the Ambulance staff that Malachi had recently been clumsy and had turned the mixer handle in the shower to hot, burning himself with hot water.
- (b) You told a Doctor at Tauranga Hospital that Malachi had burnt himself with the showerhead, by pressing it into his abdomen.
- (c) You told your father that Malachi had burnt himself in the shower.
- (d) You told your partner that you had left Malachi in the shower and when you had returned, he had burnt himself and your brother had taken him out of the shower.
- (e) You told your sister that you had left Malachi in the shower and had been alerted by your 10 year old nephew that he could hear Malachi panting and you had gone in and found him standing in the water burnt.

[53] In relation to Malachi's head injury, you said:

- (a) When speaking to Ambulance staff during the 111 call made on the morning of 1 November 2021 that Malachi had fallen over and started shaking on the floor.
- (b) When talking to Police that you had been alone with Malachi in the cabin when he reached up to the top of a set of drawers and lost his balance, falling backwards with his head striking either the corner of the bed or the carpeted floor.
- (c) You told your father that Malachi had tripped over an extension cord and fallen.

- (d) You told your partner that Malachi had just woken up and was half asleep when he lost his balance and hit his head on the corner of something.
- (e) You told your sister that Malachi had a seizure. Lies upon lies, upon lies.

[54] Shortly after Police arrived at Tauranga Hospital on 1 November you sent messages to your partner saying:

- (a) 'So bub if I go to prison I'm very sorry for that ok.'
- (b) 'But you move on okay don't wait for me to come out.'
- (c) 'I'm sorry if I get locked up baby.'

[55] After you learned that Malachi had died, you telephoned your partner, your father, and then your sister, telling each of them that Malachi had died and saying that 'I'll be going down 10 years' or that you were 'looking at about 10 years'.

### *The charges*

[56] What I have set out is a brief summary of the offending and actions which have resulted in you facing the charges to which you have pleaded guilty and which you are being sentenced for this morning. In relation to the charge of murdering Malachi between 1 and 12 November 2021, I note that you are charged with the murder on the basis that you inflicted the fatal injuries meaning to cause Malachi harm and meaning to cause his death, being murder as defined in s 167(a) of the Crimes Act 1961. To be clear, this is not a case where murder is charged on the basis of an allegation that when you inflicted what were fatal injuries you meant to cause Malaki a bodily injury or injuries that you knew were likely to cause death and were reckless as to whether death ensued or not, which is a different formulation for murder.<sup>9</sup> In this case, the Crown

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<sup>9</sup> Crimes Act s 167(b).

case against you is for, and you have pleaded guilty to, intentionally causing and meaning to cause Malachi's death.

[57] The charge of injuring with intent to injure<sup>10</sup> to which you have pleaded guilty relates to the injuries to Malachi observed by the staff of the day care centre he attended. The staff there took photographs of the injuries, but did not report what they had observed to the Police or any other authorities.

[58] The two charges of ill-treatment of a child relate firstly to the whole of the period during which Malachi was in your custody and care, and secondly to the offending on the occasion when you caused Malachi to suffer the burn injuries when in the shower and thereafter failed to take him to get medical treatment for those injuries.

*Sharron Barriball*

[59] I will now briefly summarise the facts of your offending.

[60] On 1 November 2021, shortly after being advised by Police that officers intended to search Michaela's address in relation to Malachi's injuries, you sent a text message to your teenage daughter. Your text is timed as being sent at 2.33 pm. You said: "[Daughter] you gotta get in the cabin and get everything out even Malachi's dirty washing basket and any of his clothes that are laying around go fast cos the cops are coming at 3.15pm".

[61] You then sent two further messages to your father's phone:

- (a) At 2.38 pm: "[Michaela] wants you to get the stuff out of the cabin fast and [Malachi's] dirty washing basket and any of his clothes that are laying around cos will be there at 3.15 if we out of here by then". Although you have written the word "cos" it would seem to be a reference to cops because it was the cops who were going to be there at 3.15 pm.

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<sup>10</sup> Section 189: carrying a maximum penalty of five years' imprisonment.

- (b) And then a minute later at 2.39 pm, another message to your father's phone: "Let koro know they gonna be there at 3.15 but only if me and [Michaela] are done here by then. We will text when we leave here k".

[62] In accordance with your messages and before the Police arrived at Michaela's address and cabin, your teenage daughter moved Malachi's washing basket from the cabin into the house. She had also looked for Malachi's pyjamas and placed between five and 10 items of clothing which were all types of pyjamas, into a white washing basket in the house.

[63] Police arrived at the address at about 3.20 pm. On arrival, your daughter was holding a reusable supermarket bag. She told the Police that her aunty (referring to Michaela) had told her to take Malachi's basket of washing and his pyjamas out of the cabin and put them inside the house, and that she had also received text messages from her mother, you, asking her to take Malachi's clothes out of the cabin. No mention of a bong.

[64] At the time he sustained the fatal injuries on 1 November 2021, Malachi was wearing some green coloured pyjamas. During the initial scene examination by Police on 1 November 2021, your father identified Malachi's green pyjama bottoms. These were found on top of the washing machine and they were wet.

[65] On 15 November 2021, Police executed a further search warrant at the address. In a shed on the property a black suitcase was located containing a number of items belonging to Malachi. Located within these items was a green pyjama top that was torn at the collar and which had a number of blood stains on it, both on the front and back.

### **Victim impact statements**

[66] In preparing for today's hearing I have read all of the victim impact statements and along with everyone present in the Courtroom here today I have heard those that have been read by Malachi's mother and other members of his whānau and immediate family. It takes courage to read those statements which in each case are loaded with deep emotion and sadness, much of which is incapable of being expressed in words.

They speak of profound grief at the loss of this dearly loved little boy, and also of the anger they feel towards you Michaela. I extend to each of the members of the family the sincere sympathy of the Court. Their outpouring of grief reflects the quite remarkable impact that young Malachi had on them, and the brightness, joy and promise he showed to his family and those around him. The tragedy of Malachi's death provides some strong and clear lessons to everyone involved in the care or interaction with children of the need to act whenever a child is observed to show signs of having been subjected to ill-treatment or neglect.

[67] In the circumstances of this case it appears that there were a number of adults who observed that Malachi showed signs of suffering injuries which they suspected may have been deliberately inflicted rather than the result of an accident. He was also suffering the effects of malnutrition which would have been apparent to those adults who were familiar with him and be likely to notice what would have been a significant change in his appearance and loss of weight. Any inquiries made to Michaela Barriball as his guardian about Malachi's injuries were either deflected or firmly dismissed as effectively being none of their business.

[68] Unless responsible adults are prepared to speak out and contact the Police or other responsible agencies such as Oranga Tamariki, the opportunities for intervention to prevent further trauma and damage to the child are lost. Young children are of course especially vulnerable and unable to speak effectively for themselves about abuse they are being subjected to. The abuse they are suffering may cause them to be fearful of adults and it is the responsibility of all adults to act whenever that situation is encountered. This is a community responsibility, and leaving it to others to act can so easily lead to tragic consequences as is the case here, with a little boy's life being brutally terminated by his guardian and caregiver after a series of assaults causing injury had been inflicted upon him and after a number of opportunities had arisen when adults could have taken steps to intervene and report what they observed to be happening. This is the clear lesson that everyone should take from what has happened here. And as is well known, serious violence to children is all too frequent in New Zealand and stopping it will require a fully committed community response. For Malachi and his family, for his mother and his immediate family, this is a high price

to pay for that lesson which must be sent to the community and which must be acted upon with a collective responsibility.

[69] I turn now to your sentence, Michaela, and I shall commence by briefly summarising the submissions that have been made by the Crown and your counsel.

### **Summary of Crown submissions**

[70] The Crown submits that a sentence of life imprisonment for the charge of murder would not be manifestly unjust. It submits that s 104 of the Sentencing Act applies by reason of Malachi's inherent vulnerability as a child, and therefore a minimum term of imprisonment of at least 17 years must be imposed unless that would be manifestly unjust.

[71] With respect to the aggravating features of your offending, the Crown submits that I should take into account the extent of loss resulting from the offending, namely the loss of Malachi's life;<sup>11</sup> the fact that your offending involved particular cruelty;<sup>12</sup> your abuse of a position of trust in relation to Malachi;<sup>13</sup> and Malachi's vulnerability as a young child.<sup>14</sup> The Crown submits that the additional aggravating factors in s 9A of the Sentencing Act which concern violence against, or neglect of, a child under 14 years are also relevant. The Crown submits that each and every one of those additional aggravating factors listed in s 9A are present in this case "in the extreme".

[72] Taking into account the aggravating features of your offending and the absence of any mitigating features, the Crown submits that a minimum term of between 18 and 19 years' imprisonment is appropriate in your case. The Crown refers to a number of cases involving the murder of a young child where minimum periods of imprisonment less than 17 years were imposed,<sup>15</sup> and cases where a minimum term of 17 years was imposed.<sup>16</sup> The Crown suggests that your case is particularly similar to the decision in *R v Sio* which involved a guilty plea entered before trial. With regard to your

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<sup>11</sup> Sentencing Act, s 9(1)(d).

<sup>12</sup> Section 9(1)(e).

<sup>13</sup> Section 9(1)(f).

<sup>14</sup> Section 9(1)(g).

<sup>15</sup> *R v Savage* [2020] NZHC 2553; *R v Harrison-Taylor* HC Auckland CRI-2004-092-1510, 12 September 2005; and *R v Ellery* [2013] NZHC 2609.

<sup>16</sup> *R v Sio* [2021] NZHC 1709; *R v Little* [2007] NZCA 491; and *R v Solomon* [2016] NZHC 1653.

personal circumstances, the Crown notes that you have no relevant previous convictions. It also acknowledges your early guilty pleas but at the time of preparing its written submissions the Crown did not have details of any further personal mitigating features. I have heard from the Crown in relation to that and noted their additional submissions orally before me today.

[73] The Crown accordingly submits that an end sentence of life imprisonment is appropriate, that s 104 of the Sentencing Act is engaged, and that it would not be manifestly unjust for the Court to impose a minimum period of 17 years' imprisonment upon you. The Crown says that an MPI in the region of 18 to 19 years may in fact be justified. It submits that your other offending should be addressed by way of concurrent sentences in the region of two to three years' imprisonment.

### **Summary of Defence submissions**

[74] Ms Adams accepts that a sentence of life imprisonment is appropriate in this case. There are no circumstances that would make such a sentence manifestly unjust. Ms Adams also accepts that s 104 of the Sentencing Act is engaged by virtue of Malachi's age.<sup>17</sup> In terms of the aggravating features of your offending, Ms Adams agrees that the factors identified by the Crown are relevant, namely the extent of loss resulting from the offence;<sup>18</sup> the particular cruelty involved;<sup>19</sup> the harm caused to Malachi prior to his death; your abuse of trust;<sup>20</sup> and Malachi's inherent vulnerability as a child.<sup>21</sup> She accepts that there are no mitigating features of your offending.

[75] As to your personal circumstances, Ms Adams submits that there are no aggravating factors personal to you. There are, however, personal mitigating factors. She notes that you entered guilty pleas at an early stage. You were charged on 22 December 2021 and entered guilty pleas on 27 April 2022. You have no relevant previous convictions. A cultural report has also been filed pursuant to s 27 of the Sentencing Act which I have considered and read. Ms Adams submits that the s 27

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<sup>17</sup> Sentencing Act, s 104(1)(g).

<sup>18</sup> Section 9(1)(d).

<sup>19</sup> Section 9(1)(e).

<sup>20</sup> Section 9(1)(f).

<sup>21</sup> Section 9(1)(g).

report confirms a background and upbringing marked by deprivation and abuse. She submits that these factors have directly contributed to your offending.

[76] In all of the circumstances, Ms Adams accepts that a starting point for the minimum period of imprisonment of between 18 and 19 years is appropriate. She too refers in particular to the offending in the case of *Sio* as being “very similar”. She also accepts that there are no factors which would justify a departure from the 17 year minimum period of imprisonment required by s 104. She submits that an MPI of 17 years, and no more, would be appropriate in your case.

### **Sentencing framework**

[77] I will now outline the structure of the sentencing exercise which I intend to adopt. I record at the outset the requirement that I consider and apply the principles and purposes of sentencing set out in ss 7 and 8 of the Sentencing Act. This includes the need to hold you accountable for the harm done to Malachi and his whānau, to denounce your conduct, to deter you and others from committing similar offences and to protect the community. The sentence I impose must also take into account the gravity of your offending and achieve consistency with the sentences imposed in other, similar, cases of murder.

[78] As I indicated at the commencement of my remarks, pursuant to s 102(1) of the Sentencing Act there is a presumption in favour of life imprisonment where an offender has been convicted of murder unless such a sentence would be manifestly unjust. Both parties accept that it would not be manifestly unjust in your case. I will accordingly sentence you to life imprisonment.

[79] Section 103 of the Act provides that if a court sentences an offender to life imprisonment for murder, it must impose a minimum period of imprisonment of at least 10 years. Again, it is accepted by both counsel that your case warrants a minimum period of imprisonment of at least 10 years.

[80] Section 104 of the Sentencing Act provides that in certain circumstances, the Court must impose a minimum period of imprisonment of at least 17 years if it would not be manifestly unjust to do so. As I have already indicated, both parties agree that

s 104(1)(g) is engaged in your case because of Malachi's age, that is to say, because of his inherent vulnerability as a child. Malachi was between four and five years old at the time of your offending. I agree with counsel that s 104(1)(g) is plainly engaged here.

[81] The remaining question therefore is whether it would be manifestly unjust to sentence you to life imprisonment with an MPI of 17 years under s 104. To determine whether an MPI of 17 years would be manifestly unjust, I must first identify what the appropriate minimum period of imprisonment would have been in accordance with ordinary sentencing principles. This involves considering the circumstances of the offending, including any aggravating or mitigating factors, in order to produce a starting point. I will then consider your personal circumstances as they relate to that offending and adjust the starting point upwards or downwards. Finally, by reference to that figure, I will determine whether it would be manifestly unjust to impose a minimum period of imprisonment of 17 years under s 104.

### **Starting point**

[82] I turn then to the first stage which involves fixing the starting point for your minimum period of imprisonment in accordance with ordinary sentencing principles. I note that this assessment requires me to consider the totality of your offending, not just the conduct that was directly causative of Malachi's death.<sup>22</sup> This includes your conduct which led to the charges of ill-treatment of a child. Because your most serious offence was murder, the only way in which the offending other than murder can be reflected in the sentence is in the fixing of the minimum period of imprisonment.

[83] I consider that the following aggravating features were present in your offending. First, and most fundamentally, is the extent of loss or harm resulting from the offence, namely the loss of Malachi's life.<sup>23</sup> This is perhaps the greatest conceivable loss in cases of murder involving the loss of the life of a young child. It is evident from the victim impact statements read to the Court just how deeply and significantly your offending has affected everyone who knew and loved Malachi.

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<sup>22</sup> *Pukeroa v R* [2013] NZCA 305 at [40].

<sup>23</sup> Section 9(1)(d).

[84] Secondly, it is an aggravating feature of your offending that it involved particular cruelty to Malachi.<sup>24</sup> You physically assaulted and terrorised Malachi on an almost daily basis, often severely.<sup>25</sup> This was coupled with threats of physical punishment and other, more pernicious forms of abuse, such as forcing him to stand for protracted periods and depriving him of food. On the day of his death, as I have said, he weighed just 16 kilograms, similar to his body weight when aged three years old, and he was found to have suffered acute malnutrition.

[85] Over the period of your offending you also sent a large number of text messages to your partner deriding Malachi and insinuating, among other things, that you were going to kill him at some stage.

[86] At some point during this period you came very close to drowning Malachi. He was having a bath when you grabbed the hair at the back of his head and held his head under the water, face down, completely submerging his mouth and nose. When you allowed him up for air, he asked you to stop but you forced his head back under the water. You then removed him to the cabin where you yelled at him, all while he was screaming.

[87] On 18 October 2021 Malachi soiled himself which obviously enraged you. You took him into the shower and turned the hot water on. The water has been measured, as I have said, as having a temperature of 73 degrees centigrade. The showerhead itself has been measured as having the same temperature when hot water is passed through it. The burn to Malachi's abdomen was clearly caused by an object being pressed up against his skin for an extended period of time. The burn to his shoulder was shaped in a pattern consistent with being caused by hot water. The burn to his forehead was caused by a circular object being pressed and held against his skin. All three burns occurred separately. It is clear from the appearance and location of these burn injuries that you must have held him under the very hot water of the shower for an extended period to cause the injuries to his shoulder, and that you also used the

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<sup>24</sup> Section 9(1)(e).

<sup>25</sup> This led to a number of injuries to his head, face and body. Twice while the staff at a local day care were attending to Malachi's injuries he told them that Michaela was going to be mad at him.

hot showerhead to press it against his abdomen to cause the severe burn injury he suffered.

[88] This must have caused Malachi excruciating pain not only while you were subjecting him to the horrendous experience of holding him under the extremely hot water, and pressing the hot showerhead against his abdomen, but also for many days afterwards as those burn wounds would clearly have been extremely painful. Throughout this ordeal I infer that Malachi would have been extremely distressed and crying out for you to stop and resisting your attempts to hold him there under the hot water. You nevertheless callously and cruelly in a manner bereft of any humanity whatsoever subjected this small boy to an experience which I consider to be nothing less than torture.

[89] And at no point did you seek any medical assistance or professional treatment for Malachi for these injuries.

[90] With respect to the fatal multiple blunt force head injuries inflicted on Malachi before carrying him into the main house while he was unconscious and suffering seizures on the morning of 1 November 2021, these must have involved you striking him with considerable force and repeated blows to his head with such force rendered him unconscious. This was a murderous attack by which you intended to kill him. This was another cold-hearted attack on this defenceless child, subjecting him to a violent and brutal beating resulting in inflicting what were fatal injuries. Quite obviously there can never be any excuse or justification for violence towards children, but here where you had taken on the responsibility of caring for this little boy and where he was entrusted to you to look after him, your actions must be seen as displaying a gross breach of trust and involving an acutely egregious level of inhumanity and significantly grave terms of offending.

[91] You compounded your offending by lying about how the injuries occurred to attending ambulance staff. I have already listed the injuries identified on Malachi's body by the staff at Tauranga and Auckland hospitals. I will not repeat them again. Both counsel agree that Malachi's death was the culmination of extended cruelty

inflicted by you. This cruelty and the injuries you subjected him to over that period is a significantly aggravating feature of your offending.

[92] Thirdly, both parties agree that you grossly abused your position of trust in relation to Malachi. As I have said, you were entrusted with his sole care from 21 June 2021. You were the person that he was entitled to look to for trust and protection. He was a young child who from all accounts was open and was someone who had very positive relationships with adults. He was clearly a caring and loving boy and to be confronted with your brutality must have been bewildering to him. You held all the power and you abused that power in the most callous and inhumane way imaginable. Your abuse clearly sits at the highest end of any scale and it is a further aggravating feature of your offending.

[93] Fourthly, it is an aggravating factor that Malachi was inherently vulnerable by reason of his age. He was extremely underweight as a result of your abuse of him and he was thereby less able to resist any physical force you brought to bear upon him. He was also vulnerable by having been taken away from his mother when she went into custody. He was entirely defenceless. I do not overlook however that this is a factor which is accounted for already in the application of s 104(1)(g) and I shall be conscious not to double count it in assessing the gravity of your offending.

[94] Finally, I also consider that the additional aggravating factors listed in s 9A of the Sentencing Act are applicable apart from one of them. These additional factors include the defencelessness of the victim, the serious harm resulting from the offending, and the magnitude of the breach of trust, as well as deliberate concealment of the offending from authorities. There was however no evidence of any threats made by you to prevent Malachi from reporting the offending and although that is a factor referred to in s 9A, that does not apply in your case and I disregard that.

[95] I will however take those additional factors into account, with the caveat that to some extent they overlap with the other factors which I have identified.

[96] There are no mitigating factors of the offending.

[97] In determining an appropriate starting point for your minimum period of imprisonment, it is also necessary for me to consider comparable sentences handed down in other cases involving broadly similar offending. While no two cases are identical, there are some cases which I found to be of assistance. It is unnecessary in the context of today's remarks to set out some of the factual background of the cases that I have referred to but I agree with counsel that the decision in *Sio* is of particular relevance and it warrants brief elaboration so I will address that.

[98] The defendant in *Sio* entered guilty pleas to one charge of murder, three charges of ill-treatment of a child and one charge of assault on a child.<sup>26</sup> The victim was his five year old son. The defendant would physically assault the victim, often for minor things, such as failing to eat all of his dinner or to sit still. He was also punished in other ways.<sup>27</sup> This abuse persisted from around September 2018 until his death in February 2020. On 8 February 2020, the defendant forced the victim to stand facing the wall of the bedroom with his hands held straight out in front of him. If the victim fell towards the wall from exhaustion, placing his hand on the wall, the defendant would hit or kick him. He was made to stand in this position for a total of up to seven hours throughout the day and evening. A prolonged assault followed inflicted by the defendant during the afternoon after which the victim stopped breathing. He was later pronounced dead.<sup>28</sup> A starting point of 18 years and three months' imprisonment was adopted in that case.<sup>29</sup>

[99] I agree with counsel for both parties that there are similarities between the offending in *Sio* and your case Ms Barriball. The offending in *Sio* featured many of the same characteristics as your case, including the vulnerability of the victim, a gross breach of trust, defencelessness of the victim, abuse over a significant period, particular cruelty in the offending, extensive injuries to the victim, a failure on the part of the defendant to seek medical assistance, concealment, and the impact of the death of the victim on others. While the period of time over which the abuse occurred was appreciably longer in *Sio* than in your case, I consider that your offending was nevertheless of a similar level of gravity. I note in particular that not only was Malachi

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<sup>26</sup> See *Sio*, above n 16, at [1].

<sup>27</sup> At [6].

<sup>28</sup> At [15].

<sup>29</sup> At [25].

subjected to beatings on an almost daily basis, alongside other forms of abuse clothed as discipline, but the three distinct burns found on his body alongside the near drowning in my view elevate the level of cruelty demonstrated by your offending.

[100] I consider that a starting point of 18 years and six months' imprisonment is appropriate to reflect the gravity of your offending against Malachi and the aggravating features which I have identified.

### **Personal circumstances**

[101] I turn now to consider your personal circumstances as they relate to the offending. There are no aggravating factors personal to you. You have no relevant previous convictions. There is nothing which warrants an uplift to the starting point on that basis. As to personal mitigating circumstances, I note that you were charged on 22 December 2021 and that you entered guilty pleas on 27 April 2022. Ms Adams submits that the delay before entering guilty pleas was solely due to the extensive disclosure received and the need for counsel to review that disclosure and communicate it with you while you were in custody, a task made more difficult due to ongoing issues caused by COVID-19 and the problems of access by counsel to you during that period. I accept that your guilty pleas were entered at a relatively early stage and that you are entitled to a discount on that basis. I consider that a discount in the region of 18 months is warranted to recognise and take account of your guilty pleas.

[102] A cultural report has also been filed pursuant to s 27 of the Sentencing Act. It describes your upbringing and background in detail. You were born in Tauranga and raised alongside five siblings. You were the second youngest. Your family was not well off but there was always food on the table. There was no element of gangs in your life or childhood. You have a particularly close relationship with your older sister and co-defendant, Sharron. You said that despite some difficulties, "life was good". You recall being physically disciplined by your father with a wooden spoon or a belt. You said this happened "about every second day", particularly when you were alleged to have stolen something from your mother. But there is unresolved trauma in your past which I note. I take these matters into account, including the affidavit filed on

behalf of the Crown from Detective Inspector Warner addressing some of the matters raised in your s 27 cultural report.

[103] I consider that a limited discount is available for the way in which your personal background had any causative bearing on your offending. I have little doubt that your upbringing has influenced the way that you approach inter-personal conflict and parenting as an adult. This is particularly so as regards the relationship you had with your parents, which at times was marked by some physical and emotionally abusive behaviour. Some degree of abuse was likely to be normalised for you as a result. However in my mind and in my view there is nothing outlined in the report which materially reduces your culpability for the present offending in such a way as to attract a significant discount at sentencing. I consider that a discount of five per cent adequately reflects those factors.

[104] The pre-sentence report says that when you were interviewed for the purposes of the report on a date after you had entered your guilty pleas you said you were angry and stressed on the morning of 1 November 2021 because you had been rejected by several accommodation providers that morning. You told the author of the report that you refused to accept responsibility for causing serious injury to Malachi and showed very little remorse other than to state that you were sorry for what you put Malachi through. Although you have pleaded guilty to the charges, this attitude expressed some six months or so after Malachi's death shows that you lack insight into your offending and that you do not possess genuine remorse for your offending despite the tragedy that your offending caused. Accordingly, I would allow an 18 month discount in recognition of your guilty pleas which are indicative of your acceptance of responsibility, however I do not consider that a further and discrete discount for remorse would be appropriate in your case.

[105] So taken together, a starting point of 18 years and six months' imprisonment alongside discounts of 18 months for your early guilty pleas and five per cent for personal circumstances, produces a minimum period of imprisonment of 16 years and one month.

### **Would a minimum period of imprisonment of 17 years be manifestly unjust?**

[106] The Court of Appeal has described manifest injustice under s 104 as a matter of overall impression — a question of whether the case falls outside the scope of the legislative policy which underlies s 104.<sup>30</sup> I consider that in your case that it would not be manifestly unjust to impose a minimum period of imprisonment of 17 years.

[107] The MPI you would have received in the absence of s 104 is 16 years and one month's imprisonment. That is a difference of only 11 months. It is a much smaller discrepancy than the gap seen in many other cases where manifest injustice has been found to have been established.<sup>31</sup> Your offending is also markedly different from those cases referred to by the Crown where a minimum term of less than 17 years has been imposed. In *R v Savage*, for example, the defendant's "significantly disordered and disturbed" mental state was a contributing factor in the offending and reduced his level of culpability.<sup>32</sup> Likewise, in *R v Harrison-Taylor*, the Court there found that the defendant, who murdered her eight month old son, had suffered from a dissocial personality disorder, exhaustion from lack of sleep and chronic pain for which she was taking pain killers.<sup>33</sup> These and other factors were seen to diminish her culpability.

[108] There are no such mitigating factors associated with you and your offending. I consider that this is precisely the sort of offending which falls within the legislative policy underlying s 104. The significantly aggravating features of your offending, and in particular the cruelty and duration of your abuse towards Malachi, render a minimum period of imprisonment of 17 years not manifestly unjust in the circumstances of your case. Such a sentence adequately reflects your personal mitigating circumstances and I note that were it not for your early guilty pleas, you would likely would have received a minimum period of imprisonment in excess of 17 years.

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<sup>30</sup> See *R v Williams* [2005] 2 NZLR 506 (CA) at [67] as cited in *R v Harrison* [2016] NZCA 381, [2016] 3 NZLR 602 at [40].

<sup>31</sup> The Court of Appeal recently upheld a 17 year MPI in circumstances where at least 15 years would have been imposed under normal sentencing principles, see *Clarke v R* [2021] NZCA 151 at [40]–[41].

<sup>32</sup> *Savage*, above n 15, at [74].

<sup>33</sup> *Harrison-Taylor*, above n 15, at [28].

### **Sharron Barriball's sentence**

[109] You have pleaded guilty to one charge of attempting to prevent the course of justice.<sup>34</sup> The Crown submits that you knew Malachi had been severely and critically injured. At the request of your sister, Michaela, you instructed your daughter via text messages to remove items from the cabin where Michaela and Malachi had been living and where the fatal assault had occurred. Your initial explanation to the police was that you had been messaging to ask for a bong to be removed from the cabin, but it is quite clear from the text messages you sent to your daughter on her phone and also via your father's phone that Michaela had asked for Malachi's clothing to be removed.<sup>35</sup> The Crown says that your motivation in sending the messages was to assist your sister to ensure that the Police would not locate any of the clothing being worn by Malachi at the time of the fatal assault on him. The Crown submits that your offending is a serious instance of attempting to prevent the course of justice and that it had the potential to hinder the Police investigation, or at the very least confuse it.

#### *Starting point*

[110] The Crown submits that the appropriate starting point for your offending is in the region of two years' imprisonment. It acknowledges your early guilty pleas and submits that a sentence of home detention would not be opposed provided that a suitable address is available. On your behalf Ms Harold submits that a starting point of 15 months' imprisonment is appropriate and discounts totalling around 30 per cent should be allowed. She submits that an end sentence of home detention is appropriate.

[111] I consider that the aggravating features of your offending are that your attempt to prevent the course of justice related to an active investigation into a gravely injured child which later and soon became a homicide investigation. It was obviously a very serious matter that the Police would be investigating, and any attempt to interfere with the Police investigation by removing relevant evidence is clearly serious offending. Your actions resulted in items of potential evidential significance to the Police investigation being moved. While I accept Ms Harold's submission that your offending was essentially unsophisticated it was nevertheless a deliberate attempt to

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<sup>34</sup> Crimes Act, s 117: carrying a maximum penalty of seven years' imprisonment.

<sup>35</sup> I reject the claim that it was your sister who sent the messages using your phone.

interfere with the Police investigation and you sent a number of separate text messages, which shows that you had time to reflect on the propriety of what you were doing, and so it was not entirely spontaneous, although I accept that it was not a thought out and not a calculated attempt to prevent the course of justice.<sup>36</sup> Fortunately for you, it did not result in the destruction of any relevant evidence.

[112] There is no guideline judgment for sentencing on the charge of preventing the course of justice.<sup>37</sup> The Crown refers to the case of *R v Taoho* where a starting point of 20 months' imprisonment was adopted for a defendant who told a witness not to tell the truth to Police.<sup>38</sup> As that decision concerned interference with a witness, rather than an attempt to tamper with evidence, I do not find it particularly helpful in relation to the appropriate sentence in your case. The authorities referred to by Ms Harold were I found to have been of greater assistance.<sup>39</sup> Each involved charges of preventing the course of justice in circumstances where someone had died. The Court in each instance adopted a starting point of 18 months' imprisonment.

[113] I consider that your offending warrants a similar starting point. Ms Harold submits that you did not know at the time you sent the messages how Malachi's injuries had been inflicted, or that he would die, or that there would be a homicide investigation. However, I do not accept that this description accurately characterises your offending.

[114] I consider that at the time you sent those messages you must have appreciated that your sister Michaela was in some way responsible for Malachi's injuries. It was clear that he was very seriously injured at that stage, he had been rushed to hospital for reasons which had not been adequately explained by your sister. Indeed, Michaela had sent you a text message in late October saying 'I wanna take him to hospital but I'm fucking scared asf man'. If you truly believed your sister's explanation that she was not responsible for Malachi's injuries, her request and the corresponding message you sent to your daughter asking her to conceal Malachi's clothing before the Police

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<sup>36</sup> See *H (CA6/2016) v R* [2016] NZCA 101.

<sup>37</sup> *Miller v R* [2014] NZCA 382 at [10].

<sup>38</sup> *R v Taoho* [2021] NZHC 771.

<sup>39</sup> *R v McFarlane* [2021] NZHC 1332; *R v McGirr* [2021] NZDC 4017; and *R v Cochrane* [2020] NZHC 1485.

arrived would make no sense. For those reasons I do not accept that you were unaware at the time of your offending that your sister had played a role in causing Malachi's injuries.

[115] I also do not accept that you were unaware of the gravity or severity of Malachi's injuries at the time you acted to send the messages. It is clear that he was still alive at the time you sent the messages, and at that time a Police homicide investigation had not occurred. That much is correct. However, the agreed summary of facts notes that at around 1.00 pm on 1 November 2021, Malachi "had emergency surgery, was intubated, and was placed into an induced coma". You sent your first message to your daughter at 2.33 pm and the subsequent two messages at 2.38 and 2.39 pm that afternoon. So by the time that you sent those messages although you may not have known any details of the nature and number of Malachi's injuries, you must have known that he was seriously injured. Furthermore, you must have realised the gravity of your sister's situation and the trouble she was in when you were informed by the Police that they intended to search the address where she and Malachi had been living. It was this information which most likely prompted you to send the messages you sent. Those factors inform the gravity of your offending.

[116] I consider that your offending warrants a starting point of 17 months' imprisonment. In my view it is similar in terms of severity to the offending in the cases I have referred to.<sup>40</sup> It involved an attempt to knowingly conceal evidence and prevent the course of justice in the context of an active investigation into a gravely, and as it turned out fatally, injured child. I am satisfied that you knew Malachi was seriously injured when you sent those text messages. You may not have known the precise character or nature of those injuries, but you knew they were so severe because of the emergency surgery and the treatment he was receiving at the hospital. I also consider that having been effectively on notice as a result of Michaela's previous communications to you during the period prior to 1 November 2021, that she had been involved in causing him injuries. That is the only logical explanation for why she asked you to arrange for items to be moved from the cabin and it is the only logical reason why you complied with her request — you knew what was at stake and the

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<sup>40</sup> See *McFarlane, McGirr and Cochrane*, above n 39.

consequences she was facing. So while it appears to have been largely a spur of the moment response to her request, perhaps out of a misguided sense of loyalty towards your younger sister,<sup>41</sup> it nevertheless warrants a stern response in terms of the sentence to be imposed.

*Personal circumstances*

[117] There are no aggravating circumstances personal to you. As to mitigating circumstances, I have read your pre-sentence report and the cultural report prepared pursuant to s 27 of the Sentencing Act. I consider that a discount of 25 per cent is appropriate to recognise your guilty pleas and a five per cent discount in recognition of personal circumstances related to your offending.

*Home detention*

[118] This produces an end sentence of 12 months' imprisonment. The Crown does not oppose that sentence being commuted to one of home detention provided that a suitable address is available and as you have heard in discussions I have had with counsel this morning, a suitable address is available at the Mount Maunganui address which is proposed in the pre-sentence report which has been assessed as technically suitable. I shall accordingly sentence you to home detention.

**Result**

[119] Michaela Barriball and Sharron Barriball would you now please both stand.

*Michaela Barriball*

[120] Michaela Barriball on the charge of murdering Malachi Rain Subecz, I sentence you to life imprisonment, and I impose a minimum period of imprisonment of 17 years. That means that you will not become eligible to be considered for release on parole until you have served 17 years' imprisonment.

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<sup>41</sup> See *McFarlane*, above n 39, at [9].

[121] On the charge of injuring with intent to injure which has a maximum penalty of five years' imprisonment, and which relates to the injuries inflicted on Malachi which were observed by the day care centre staff, I sentence you to a term of two years' imprisonment.

[122] On the first of the two charges of ill-treatment of a child, which has a maximum penalty of 10 years' imprisonment, and relates to the entire period during which Malachi was in your custody and care I sentence you to a term of two years' imprisonment.

[123] On the second charge of ill-treatment of a child which also of course carries a maximum penalty of imprisonment of 10 years and which relates to the occasion when you inflicted burns on Malachi using hot water in a shower and a hot shower head, I sentence you to a term of three years' imprisonment.

[124] The terms of imprisonment imposed on the three charges other than the murder charge, are to be served cumulatively on one another and total seven years' imprisonment. Those sentences totalling seven years' imprisonment are however to be served concurrently with the life sentence of imprisonment imposed with the MPI of 17 years to be served on the charge of murder.

*Sharron Barriball*

[125] Sharron Barriball, on the charge of wilfully attempting to prevent the course of justice, I sentence you to a term of six months' home detention to be served at the Mount Maunganui address proposed and set out in the pre-sentence report.

[126] You may both stand down.

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Paul Davison J