

**NOTE: HIGH COURT ORDER PROHIBITING PUBLICATION OF ANY
MATERIAL REFERRING TO SPECIFIED BACKGROUND FACTS
REMAINS IN FORCE: SEE [1], n 1 OF THIS JUDGMENT.**

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA171/2025
[2025] NZCA 444**

BETWEEN JESSICA MULFORD
Appellant

AND THE KING
Respondent

Hearing: 29 July 2025

Court: French P, Jagose and Gault JJ

Counsel: N M Dutch for Appellant
A J Ewing for Respondent

Judgment: 2 September 2025 at 11.30 am

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by French P)

Introduction

[1] Ms Mulford was convicted at trial of the manslaughter of a two year old child. The trial Judge, Campbell J, sentenced her to a term of imprisonment of five years and seven months.¹

[2] The jury also found Ms Mulford guilty of injuring the same child with intent to injure by strangling her on an earlier occasion some five months prior to her death. On that charge, the Judge convicted and discharged Ms Mulford due to the effect of s 18 of the Sentencing Act 2002.

[3] Ms Mulford now appeals the manslaughter sentence.

[4] On her behalf, counsel Mr Dutch contended the sentence was manifestly excessive because (1) the Judge's starting point was too high and incorrectly took into account the injuring with intent to injure offending; and (2) insufficient discounts were given for personal mitigating factors. Mr Dutch invited us to set aside the sentence and replace it with a prison term of two years and six or eight months.

Background

[5] The child, whose name was Harlee-Rose Niven, was the daughter of Ms Mulford's partner. According to his evidence at trial, prior to Harlee-Rose's birth he and Ms Mulford had agreed their relationship would not be exclusive.

[6] For the first 18 months of her life, Harlee-Rose lived with her mother. Then in August 2021 she came to live with her father with the result that Ms Mulford at age 17 became a primary caregiver.

[7] As the Crown acknowledges, Ms Mulford at times cared well for Harlee-Rose but she also struggled with parenting and resented having to look after someone else's child.

¹ *R v Mulford* [2025] NZHC 249 [sentencing notes]. At sentencing, the Judge made an order under s 205 of the Criminal Procedure Act 2011 prohibiting the publication of material referring to specific background facts. We have not referred to these facts in our judgment but note that the order remains in force.

[8] On 9 November 2021, Ms Mulford strangled Harlee-Rose, injuring the back of her neck and causing the whole of her face to swell and discolour. There was also bruising to Harlee-Rose's earlobe consistent with pinching. Harlee-Rose was taken to hospital. Ms Mulford lied to the medical staff and others about the cause of the injuries, falsely claiming that she had fallen from a deck.

[9] Five months later, on 9 April 2022, Ms Mulford (by that time aged 18) killed Harlee-Rose by applying such force to the child's abdomen that it ruptured her internal organs. The little girl suffered a large laceration to her liver, meaning (as the forensic pathologist put it at trial) that the liver was effectively torn in two, as was her pancreas. The small bowel was also lacerated. Harlee-Rose was rendered unconscious within minutes and later died in hospital.

[10] Ms Mulford again attempted to conceal what she had done.

[11] At trial, her counsel suggested that it was either Ms Mulford's partner who was responsible for the child's death or it was an accident; and that the injuries observed on the earlier incident were the result of an accident or ibuprofen. Ms Mulford herself did not give evidence but called evidence from two witnesses.

[12] The jury acquitted Ms Mulford of murder but found her guilty on the alternative charge of manslaughter and of injuring with intent to injure.

The sentencing

[13] In imposing an end sentence of five years and seven months' imprisonment, the Judge's methodology was as follows.

[14] First, he adopted a starting point of seven years' imprisonment,² having identified the aggravating features of the offending as being the serious violence that would have been required to cause the injuries, the extreme vulnerability of a two-year-old, Ms Mulford's breach of trust and her earlier act of strangling Harlee-Rose.³ In setting this starting point, the Judge referenced other cases which he

² At [29].

³ At [27].

considered to be comparable to Ms Mulford’s offending.⁴ As is common practice when sentencing for manslaughter, the Judge then cross-checked a starting point of seven years by reference to the guideline decision of *R v Taueki*.⁵ That decision identifies aggravating features of violent offending and sets out sentencing bands with a range of starting points for each. The Judge considered seven years was consistent with band two offending under that decision which has a range of five to 10 years’ imprisonment.⁶

[15] Turning to consider mitigating personal factors, the Judge then adjusted the starting point downwards by a total of 20 per cent on account of Ms Mulford’s youth (15 per cent) and certain background factors (five per cent).⁷

[16] We now address the grounds of appeal.

Was a starting point of seven years’ imprisonment too high?

[17] In contending that seven years was too high, Mr Dutch raised a number of points.

[18] The first related to the Judge’s summary of the facts of the offending regarding the method of injury. The Judge stated that although the precise mechanism of injury was unknown, the injuries were consistent with Harlee-Rose having been stomped on, kicked or punched in the abdomen.⁸ Mr Dutch submits that this was “not the full picture” because there was expert evidence that the injuries could also have been caused by an adult kneeling on the child’s abdomen, or standing on it for a sustained period.

[19] We accept that the submission accurately states the evidence of the forensic pathologist. However, the same expert witness also said that for organs to have been pushed against the backbone causing the pancreas of a two-year-old to tear required a

⁴ At [22]–[26]. The Judge cited *R v Wichman* [2016] NZHC 1663; *R v Ikamanu* [2012] NZHC 2755; *R v Pene* [2010] NZCA 387; and *Robinson v R* [2011] NZCA 479.

⁵ *R v Taueki* [2005] 3 NZLR 372 (CA).

⁶ Sentencing notes, above n 1, at [30].

⁷ At [39] and [44].

⁸ At [11].

considerable amount of force from the outside. And, in our view, it is the extremity of the violence required to inflict those injuries that mattered for sentencing purposes, not the exact mechanism. We are therefore not persuaded the Judge’s statement took the starting point out of range.

[20] The second concern raised by Mr Dutch relates to the Judge treating the strangulation as an aggravating feature.⁹ In Mr Dutch’s submission, that was a breach of s 18 of the Sentencing Act.

[21] Section 18 (as it stood at the time) relevantly provided:¹⁰

18 Limitation on imprisonment of person under 18 years

- (1) No court may impose a sentence of imprisonment on an offender in respect of a particular offence, other than a category 4 offence, or a category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years, if, at the time of the commission of the offence, the offender was under the age of 18 years.

[22] As already mentioned, Ms Mulford was 17 at the time she strangled Harlee-Rose and it was because of s 18 that Campbell J convicted and discharged her on the injuring with intent to injure charge.¹¹

[23] Mr Dutch however says that s 18 not only precluded the Judge from imposing a sentence of imprisonment for the injuring charge, it also precluded him from taking the facts of that offending into account when setting the starting point for the manslaughter charge. In his submission:

The sole effect [or] relevance of [the injuring charge] being before the jury should have been to assist the jury with making a decision about the manslaughter charge, not then used to uplift the sentencing.

⁹ At [27].

¹⁰ Section 18 was replaced on 29 June 2025 to provide for an exception when an “offender is already serving a sentence of imprisonment for any other offence that they committed, in whole or in part, before, with, or after the offence mentioned in subsection (1)”: see subs (4).

¹¹ At [34].

[24] It is correct that in *Diaz v R* this Court held that offending captured by s 18 should be disregarded in determining the length of a prison sentence for an offence outside it. The Court stated:¹²

It would be inconsistent with the policy underpinning s 18 for the Court to uplift a sentence of imprisonment by reference to a charge which, pursuant to s 18, could not itself result in a sentence of imprisonment. Such an uplift would result in the young person spending (additional) time in prison as a result of the less serious charge: the very thing that s 18 is intended to preclude.

[25] However, in our view, the circumstances of *Diaz* were very different to this case. In *Diaz*, the first offence in time was an offence of grievous bodily harm committed when Mr Diaz and two co-defendants had attacked another man causing broken ribs and a collapsed lung.¹³ A month or so later, in an unrelated family violence incident, Mr Diaz had punched and kicked his partner's face resulting in a charge of injuring with intent.¹⁴

[26] The grievous bodily harm offence was a category 3 offence with a maximum penalty of 14 years' imprisonment. That meant s 18 did not apply and a custodial sentence was therefore available. That was not the position for the lesser offence of injuring with intent. At sentencing, the Judge had taken the grievous bodily harm offence as the lead offence and adopted a starting point of six years' imprisonment, which he then uplifted by six months for the injuring with intent charge.¹⁵ As noted, on appeal this Court said the uplift for the injuring with intent charge was precluded by s 18 and it adjusted Mr Diaz's sentence accordingly.¹⁶

[27] In *Diaz* the offending caught by s 18 had no relevance to the culpability of the lead offence. It was separate and distinct and so in a very real sense the uplift was in essence the imposition of a prison sentence for that offence. In contrast, in the present case, the less serious offence was directly and intimately connected with the more serious offence. It was logically an aggravating feature of the manslaughter, and without it, the later offending could properly have been seen as less culpable. As it

¹² *Diaz v R* [2021] NZCA 426 at [32].

¹³ At [4].

¹⁴ At [5].

¹⁵ At [10].

¹⁶ At [32].

was, it meant the killing was not a one-off loss of control but rather an escalation in a pattern of violence.¹⁷ Furthermore, it shows the killing could even have been avoided had Ms Mulford told the truth about the earlier offending and sought greater support.

[28] The distinction we are making is also illustrated by the example given in a High Court decision about an offender stealing a car for use in a subsequent aggravated robbery.¹⁸ The car conversion is clearly an aggravating feature of the robbery, the car being used to facilitate the commission of the offence.¹⁹ It cannot be, as the Judge put it in that case, that s 18 was intended to prevent a court from considering as an aggravating feature conduct that truly aggravated the culpability of another offence just because it happened to also amount to a separate offence within s 18.²⁰

[29] We agree and conclude that in this case the Judge did not err in treating the strangulation as an aggravating factor.

[30] Finally, in determining whether the starting point was within range, we have had regard to comparator cases involving a caregiver's manslaughter of a child as a result of a single violent incident.²¹ As is only to be expected, these reveal a number of different starting points, with the range generally being between five to 10 years' imprisonment.²² Of the various comparator cases, we agree with the Crown that the three that most closely resemble the present facts are *Robinson v R*, *Ikamanu v R* and *R v Broadhurst*. Those cases had starting points of seven and a half years, eight years, and eight and a half years, respectively. All of those are consistent with the starting point adopted in this case. In saying that, we have not overlooked the High Court decision of *R v Paea* cited by Mr Dutch where a starting point of three years and nine months' imprisonment was adopted.²³ However, this Court has since described that decision as an outlier.²⁴

¹⁷ See the reasoning in *Woodcock v R* [2010] NZCA 489 at [41].

¹⁸ *Matkovich v Police* [2021] NZHC 1660.

¹⁹ See *R v Mako* [2000] 2 NZLR 170 (CA) at [45].

²⁰ *Matkovich v Police*, above n 18, at [30].

²¹ Counsel helpfully referred us to *R v Wichman*, above n 4; *R v Iorangi* CA533/99, 30 March 2000; *R v Ikamanu*, above n 4 (and the subsequent appeal in *Ikamanu v R* [2013] NZCA 510); *R v Pene*, above n 4; *R v Paea* [2016] NZHC 822; *Robinson v R*, above n 4; *R v Broadhurst* [2008] NZCA 454; and *Woodcock v R*, above n 17.

²² *R v Roberts* [2021] NZHC 146 at [20], citing *R v L* [2020] NZHC 2911 at [19].

²³ *R v Paea*, above n 21.

²⁴ See *JB v R* [2024] NZCA 669 at [50].

[31] That the starting point of seven years was within range is also supported by the case of *S v R*.²⁵ There, a seven-and-a-half-year starting point was upheld for offending that fell within band two of *Tauaki* as it involved a serious assault of a two-year-old which, although not fatal, caused life-threatening brain injuries.²⁶

Were the discounts for personal mitigating factors insufficient?

[32] It is common ground that Ms Mulford was entitled to a youth discount. As the Judge acknowledged, adolescent impulsiveness and lack of parenting skills were a contributing factor to the offending.²⁷ Rejecting a Crown submission to the contrary, he also accepted that despite Ms Mulford's continued denial of responsibility she had good prospects for rehabilitation.²⁸

[33] In light of that, and the Judge's further observation that adjustments of 10 per cent to 30 per cent are common for youth, Mr Dutch contends on appeal that the appropriate discount for Ms Mulford was 30 per cent, as opposed to the Judge's 15 per cent.²⁹

[34] We accept that another Judge may in the exercise of their discretion have given a slightly greater discount on account of age. However, equally we are not persuaded that an allowance of 15 per cent amounts to error warranting appellate intervention in a case involving, as this one did, such extreme violence against a defenceless toddler. It is well established that discounts, including discounts for youth, may be tempered by the seriousness of the offending.³⁰ In that regard, we note this Court recently held that a 10 per cent discount for background factors was appropriate in the case of a 20-year-old who killed a newborn baby.³¹

²⁵ *S (CA632/2015) v R* [2016] NZCA 367.

²⁶ At [56]–[57].

²⁷ Sentencing notes, above n 1, at [37].

²⁸ At [38].

²⁹ At [39].

³⁰ *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [209], citing *Carr v R* [2020] NZCA 357 at [65].

³¹ *JB v R*, above n 24, at [69].

[35] In addition to the youth discount, Mr Dutch also challenged the adequacy of the other discount of five per cent given by the Judge for background factors.³² In his submission, they warranted a discount of between 10 and 15 per cent.

[36] This argument relates to two reports provided to the Judge at sentencing, one from a psychologist and the other an alcohol and other drug (AOD) report. Both reports referenced a history of drug and alcohol abuse with a self-reported cannabis use described in the AOD report as being consistent with “a severe cannabis use disorder”.

[37] The psychologist’s report noted that although Ms Mulford had been raised by a loving and supportive family, she talked of being bullied at primary school and disclosed an incident of abuse at age 13. The report further noted that from an early age, Ms Mulford had experienced emotional and psychological difficulties and in later years developed behavioural issues that disrupted her secondary schooling.

[38] The Judge said he was not satisfied having read the reports that Ms Mulford’s addictions contributed in any way to the offending against Harlee-Rose and therefore in his view they did not justify any adjustment to the starting point.³³

[39] In relation to Ms Mulford’s mental health issues, the Judge held that although they could not be considered an operative cause of the offending, they were part of the explanation for it. That was because, in his assessment, they were part of the reasons Ms Mulford was unable to cope with the pressure of being a caregiver and so in that sense they did contribute to the offending and therefore some allowance should be made.³⁴ The Judge went on to say that any allowance should however be modest to avoid double counting with the adjustment already made for youth and therefore allowed for five per cent.

³² Sentencing notes, above n 1, at [44].

³³ At [43].

³⁴ At [44], citing *Berkland v R*, above n 30, at [109].

Our view

[40] Turning first to the refusal to allow a discount for drug addiction, we consider that in the absence of any evidence of a causal or even contributory nexus between the addiction and the offending, the Judge was fully entitled to decline giving any discount on account of the cannabis use.

[41] In relation to the mental health issues, it is noteworthy that because Ms Mulford denied killing Harlee-Rose, the psychologist report writer deliberately refrained from giving an opinion on any purported causal nexus between her psychological difficulties and the offending. Instead, the report was said to provide a psychological formulation of the context within which to understand Ms Mulford's functioning and how she interacted within intimate relationships.

[42] It is clear that the Judge was cognisant of the limitations of the report but also took into account the contextual point made in the report and did so in a principled way consistent with *Berkland v R*. As with the youth discount, we accept that another Judge may have given a slightly greater discount but of itself that does not warrant appellate intervention.

[43] Finally, standing back and looking at the end sentence of five years and seven months' imprisonment, we are not persuaded having regard to all the circumstances of both the offending and the offender that this was a manifestly excessive sentence.³⁵

Outcome

[44] The appeal is dismissed.

Solicitors:
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³⁵ Criminal Procedure Act, s 250(2); and *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [33].