ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF DEFENDANT PURSUANT TO S 200 CRIMINAL PROCEDURE ACT 2011.

IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE PAPAIOEA ROHE

CRI-2022-254-19
[2025] NZHC 1162

THE KING

v

W

Hearing: 13 May 2025

Counsel: B D Vanderkolk and A M Barham for Crown
N M Graham and M J Phelps for Defendant

Sentence: 13 May 2025

SENTENCING NOTES OF ISAC J

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[1] [W], I have to sentence you for the manslaughter of [M].[1] I can't do that quickly or simply. I am going to have to talk about things that you may not understand because they're technical legal things. The reason I have to do that is because what I am saying needs to be understood and read by other people like the lawyers and other judges.

[2] I'm going to begin by explaining what you did — the reason why we're all here today. That won't be easy for you to listen to but you should because it's important. I'm then going to talk about other cases to help me find the right outcome — the sentence that I need to impose — for you.

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1 Crimes Act 1961, ss 171 and 160(2)a).

[3] I also want to acknowledge and welcome [M's] family here today. Nau mai haere mai. I am grateful for the statements that have been read. They were distressing for me to listen to. But I've now got a much better sense of the woman who was your mum, your sister and Nan, and the profound loss that you all now feel. She obviously did a lot for young people — trying to raise them and working as a teacher's aid. So while my focus today has to be on sentencing [W] for what he has done, I have not lost sight of the special person who isn't here today and the immense sense of mamae that you all feel. Some of the things I'm going to say may be difficult for you to hear as well. I don't mean to cause you any upset. That's the last thing that I would want. But it's part of my job. And as you heard Ms Graham say, this case is a real tragedy for [M], for you, her whānau, and for [W].

The offending

[4] [W] on the evening of 10 December 2020 you were at home with your whāngai grandmother [M]. During the evening she yelled at you. The neighbours could hear what she was saying from inside their house. Two hours later they could still hear [M] shouting.

[5] At about 9.00pm you and your grandmother went to bed. However, later that night you left your bedroom and using a key from inside the house you unlocked a garden shed in the backyard. You took a five-litre fuel canister full of petrol and brought it back inside.

[6] You then took a barbecue lighter from the kitchen, and a collection of unopened mail. In the lounge you poured petrol onto a blanket. You then lit some tissues on your bed, which went out.

[7] You then entered [M's] room and poured petrol onto clothing sitting on top of a wooden bench stool situated at the foot of her bed. You lit the unopened mail and, at around 11.25pm you used the paper to ignite the petrol on her clothing.

[8] The fire spread very quickly. You were scared and left the bedroom, pulling the door shut behind you. I'm sure when the petrol ignited everything happened very fast, and you were very frightened by what you'd done.

[9] You ran from the house to your friend's house 1.5km away and alerted them to the fact there was a fire at the address.

[10] [M] woke to her bedroom engulfed in flames. She had to break a window to climb out to escape the fire. But she suffered very significant burns before she could escape and she passed away the following morning from her injuries. When people were attending on her outside the house she only wanted to know that you were safe and had got out from the fire.

Personal circumstances

Youth

[11] You were only 12 years old at the time you lit the fire and you are 17 now. As far as I know you'd never been in proper trouble before this. And despite how long this case has been going on for you have largely managed to keep out of real trouble for the last three years.

[12] You have had a very tough life as a young person [W]. I'm not going to go through it all in this public place. The notes of what I am saying now will set out a summary of the things you've had to contend with. They are the sorts of things no child should ever have to go through.[2]

[13] I think what happened to you as a little kid affected you a lot. And I think on the night you lit the fire you didn't mean to hurt [M], but you wanted to get away from that house and not have to go back there. So I'm going to approach your sentencing on the basis that you lit the fire intending to burn the house down, but you didn't mean for [M] to be hurt.

[14] Despite the things that you have lived through, there are reports telling me that you are a clever young man. You are polite and thoughtful and want to do the right thing. The reports say that you have done remarkably well for someone who has had the experiences you have had. So the experts tell me that you are resilient and strong,

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[2] A summary of W's psychological issues and adverse childhood experiences is attached to these sentencing notes.

and that you are doing really well with [your caregiver] and her family. And you're also doing well at school.

Starting point

[15] I now have to set what is called a starting point for your sentence. That is the punishment that a person would receive for what you have done before I take into account positive and negative things about you personally.

[16] The bad aspects of what you did — or the aggravating features — are these:

(a) firstly, there was some element of premeditation because you retrieved petrol from the shed, and experimented by burning tissues in your room before setting fire to [M's] bedroom;

(b) secondly, there is the extent of harm. And that's immense. Though you did not intend to do so, [M] suffered extensive burns and died from her injuries. And you've heard the mamae and grief her family have suffered as a result. Her family have lost not only their nan, their mum, but also the memories of her attached to her house;

(c) finally, you started the fire in the bedroom while [M] was asleep and did not immediately call out for help. If you were an adult this would have been a seriously bad feature. But your actions were those of a panicked child, and you did alert adults at your friend's house once you had arrived there.

[17] Now your case is complicated as the lawyers all agree. And they say that the extent to which I should have regard to and can get help from other cases where serious violence has been inflicted is limited. That's because the unlawful act that makes up your charge was arson rather than violence, and as your lawyers have said while the potential risk of harm would have been obvious to any right-minded adult there is no evidence you intended to cause serious injury to [M].

[18] The Court of Appeal has said that in sentencing manslaughter, the effect of sentences must be measured against the aspect of conduct that was intentional, and which created the risk of death; rather than the unintended consequence of death.[3] As both lawyers have asked me to, I first compared what you did against arson cases, where death did not occur, noting that in your case a higher sentence may be needed to recognise that death occurred; and then I compared your case to other manslaughter cases.

[19] The prosecutor has referred to cases where the starting point was six years imprisonment for arson.[4] They then provided me with two cases of manslaughter offending, and say that the appropriate starting point is nine years.[5] Your lawyer says that an appropriate starting point for arson alone could not be as high as six years.[6] They say that the offending is less serious than the manslaughter cases where a nine year starting point has been adopted.[7]

[20] I agree. I adopt a starting point in your case of five and a half years' imprisonment overall. I do that because your case is not much worse than *R v Hooper*,

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3 *R v Letua* [2002] 1 NZLR 215 at [63] Further the Law Commission commented on this passage, stating that "…manslaughter is inadvertent killing and, as such, the focus should be on the action that caused the death and not only the result…this ensures a level of consistency in how manslaughter offending is treated compared with the position if the same action had not resulted in death." See New Zealand Law Commission "Understanding Family Violence: Reforming the Criminal Law relating to Homicide" (NZLC R 139, 2016) at [11.69].

4 *French v R* [2014] NZCA 297 and *R v Neal* [2008] NZCA 327. In *French v R,* a mother used accelerant to light fire in her home in close proximity to the closed door of her sleeping children's bedroom. She had placed bedframes against the door as an obstruction. The children escaped through a window. A starting point of six years' was adopted. In *R v Neal* the defendant lit a rubbish bin on fire inside a home where three other people were sleeping in the house, and two were affected by alcohol. The defendant raised the alarm with occupants and rang emergency services herself. All occupants escaped. A starting point of six years' was adopted.

5 *R v Webster* [2014] NZHC 309. The two defendants had been drinking with the victim. They mistakenly accused him of having sexual interest in children. One defendant poured petrol on the victim and the other struck a lighter 30 cm away, intending to scare him. However, the victim was set alight. The defendants attempted to extinguish the fire and call emergency services. *R v Wawatai* [2014] NZHC 2374. The defendant argued with his partner after a day of drinking. The defendant sprinkled petrol into the victim's bedroom, with some petrol landing on the victim. The defendant then set fire to the room. The victim ran from the room on fire, and died.

6 Submitting that the offending was similar to *Connolly v R* [2022] NZCA 499 and *R v Daniels* [2017] NZHC 2805 and less serious than *French v R,* above n 4. In *Connolly v R,* the Court of Appeal upheld a starting point of four years' 10 months. The appellant broke into the house and lit a fire while four occupants were inside, and two were asleep. He lit the fire in retribution for a failed drug deal. In *R v Daniels,* a starting point of five years' was adopted. The defendant deliberately started a fire in a bedroom, while the victim was sleeping in another room. She locked the door and pocketed the key. She alerted the victim and unlocked the door for him to escape.

7 Citing *R v Timlin* High Court Dunedin, 17 April 2008; and *R v Manuel* High Court Rotorua, 16 December 2008.

where a starting point of three years imprisonment was chosen for a charge of arson where a defendant, a young person, poured petrol over and then set fire to a tent his uncle was in.[8] And while your case does not involve the intended use of violence, I have also compared it with another recent decision where a six year starting point was adopted for a young person, four years older than you at the relevant time, who stabbed a man in the chest with a knife and killed him.[9] In that case the defendant had a six year term of imprisonment adopted as the starting point. Other arson and manslaughter cases I have been referred to suggesting that a nine year starting point is appropriate, in my view, are clearly more serious than yours and I don't find them especially helpful.

Personal mitigating factors

[21] From the starting point of five and a half years' imprisonment I now have to look at your personal circumstances to see how much it should be reduced.[10]

[22] I have read your pre-sentence report, a psychological assessment prepared by Mr Trainor, other material that's been provided to me by Oranga Tamariki and I'm aware already of other material about your childhood that's been provided to the Court during the trial process including historical family records.

Guilty plea

[23] Now you pleaded guilty very shortly after the Crown filed an amended charge of manslaughter. And I agree with your counsel that a reduction of 25 per cent to reflect that is appropriate.

Youth, rehabilitation and personal background

[24] And as I've said you were only 12 at the time of the offending. The courts have recognised that there are significant neurological differences between young people and adults.[11] Those differences mean that young people can do impulsive things

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8 *R v Hooper* [2021] NZHC 62.
9 *R v SM* [2018] NZHC 3345.
10 During sentencing in error I referred to "five years" rather than five and a half years' imprisonoment.
11 *Churchward v R* [2011] NZCA 531; *Dickey v R* [2023] NZCA 2.

without thinking through what they are doing and what the consequences might be. The sorts of discounts the Court commonly gives to reflect a young person's immaturity is around 30 per cent. It can be greater if the offending is linked to a form of mental impairment, or the offending is historic and the offender has since reformed themselves.

[25] The courts also recognise that what happens to people when they're young — when they're a child — can affect them in ways that have a significant impact on how they behave in the future. Your case is an example of that. What the courts recognise is that bad childhood experiences make it more difficult for a young person to make good decisions. So their actions are less blameworthy than someone who has a perfect home life and then goes on to commit an offence.

[26] Finally, the courts also recognise that where an offender has good prospects of rehabilitation some recognition may be called for. The positive information I've received indicates that you are in a supportive and loving environment, that you have been engaging well in your education, and so you show real ability to find a good job and not come back to a courtroom again.

[27] To reflect your youth, the very good prospects of rehabilitation and your reduced culpability given your childhood experiences, a reduction of 30 per cent is appropriate. That is in fact on the low side but I have to have regard to the overall reductions to keep them proportionate and ensure that your end sentence reflects the grave seriousness of what you have done.

Time spent on bail

[28] Finally I'm going to provide you with a further small reduction to address the very lengthy period of time you spent awaiting trial on bail. Nearly a quarter of your life has been spent with this case hanging over you. That is not a good reflection on the criminal justice system. I will give you a further final reduction of five percent.

Home detention?

[29] All this means that the notional end sentence for you would be one of imprisonment of 26 months. However, for the reasons your lawyers have advanced, I'm satisfied that rather than prison the best outcome for the community and you is to permit you to continue living with [your current caregiver] and to continue with your education. As your counsel submits, you are now a very different young man to the child who committed this terrible crime. So I reduce the sentence by a further two months.

[30] For that reason, I am going to sentence you to home detention for 12 months on the conditions recommended by Corrections.

Name suppression

[31] Finally, your counsel has also sought ongoing name suppression on your behalf. You have had interim name suppression up to this point. The Crown has responsibly acknowledged that in your case it would be appropriate to make that order permanent and I do so.

[32] The psychological reports indicate that you are doing very well coping with a lot of trauma. Loss of name suppression at this point would adversely affect your continuing development as a young person. And given your age, the consequence of publication now would be amplified across the rest of your life.

Conclusion and result

[33] [W] would you stand now please.

[34] On the charge of manslaughter you are sentenced to home detention for 12 months. The conditions recommended by Corrections are imposed. I record here that your sentence should not interfere in any way with your continuing education and your engagement in rehabilitative programmes.

[35] Thank you. You will have to go into the cells for a little bit while some paper work is completed. You may now stand down.

Isac J

Solicitors:
BV+A, Palmerston North for Crown

Summary of W's psychological issues and childhood experiences

[1] The first 12 years of [W's] life were marked by serious physical and psychological violence which severely affected him. During sentencing it was not appropriate to detail these experiences before him in open court for reasons which will soon be apparent. However, the abuse he suffered provides important background to [W's] offending, and ultimately the sentence passed upon him today.

[2] In my decision of 20 December 2023, determining [W's] fitness to stand trial on the original charge of murder, I considered that [W] suffered from a mental impairment for the purposes of s 4 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.[12] This conclusion was drawn from the evidence of three health assessors, Dr Enys Delmage, a consultant in adolescent forensic psychiatry, Dr James Knight, a forensic psychiatrist with 20 years' experience, and Mr Nev Trainor, a registered clinical psychologist.

[3] Dr Delmage found that [W] has experienced chronic trauma, meaning he had high vulnerability to forming post-traumatic stress disorder (PTSD) or complex PTSD, and accepted that a combination of factors, including trauma, acquired brain injuries, exposure to drugs and alcohol in utero, elements of post-traumatic stress disorder, in tandem with a degree of developmental immaturity, could amount to a mental impairment.[13] Dr Knight also considered [W] had impaired emotional regulation primarily attributable to the psychological trauma he has experienced and this impairment constituted a diagnostic criteria for complex PTSD. Finally, also relevant to the offending which I highlighted in my fitness judgment was the fact that a report from a counselling service of 18 December 2019 noted that [W] was "triggered very easily when he hears loud voices or perceives his attachment figure to be angry with him", and that these responses "corollate [sic] with post-traumatic stress presentation".[14]

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12 *R v W* [2023] NZHC 3817 at [61].

13 Although he did not consider W met the criteria for a formal mental disorder, he recognised that whether W had a mental impairment was a matter for the Court.

14 *R v W*, above n 12, at [56]. As the summary of facts for sentencing and these sentencing notes confirm, neighbours heard [M] shouting at [W] in the afternoon and evening before the offending.

[4] The existence of a mental impairment was not surprising given W's childhood. During the 12 years before the offending, [W] lived in a number of care arrangements.[15] While living with his mother [L], between two and five years old, he witnessed domestic violence between [L] and her partner. [L] was a heavy alcohol user and at three years old [W] was a passenger in the backseat when [L] was stopped by Police and found to have breath alcohol of over twice the legal limit. In my decision on [W's] fitness to stand trial, I referred to two particular episodes that occurred while [W] was in the care of his whāngai Aunt [C], who is [M's] daughter:[16]

> …First, at the age of eight, W required medical treatment after the nails had been pulled from his hands and feet.[17] On another occasion it seems W threatened to smash his head through a glass door in response to a stressful environment.

[5] I also referred to a summary by Mr Trainor, a registered child psychologist:

> 16. [W] has been exposed to family violence and alcohol and drug abuse and been the victim of neglect and abuse since he was three years old. OT [Oranga Tamariki] information notes 11 reports of concern for the period 2011 to 2021. These include [W] sustaining physical injuries and mental abuse, as well as neglect. He was admitted to hospital in 2017 after sustaining serious injuries (to his eye, ear, and buttocks) while in the care of his aunt [C]. OT file information from 2017 notes concerns about [W] also sustaining burns to his toes and having his toe and finger nails pulled off with a fork. Concerns have been raised about abuses to W within each of his whanau/extended whanau environments with his mother, his aunty [C], and his grandmother … the … victim.
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> 17. [W] has also witnessed family violence on multiple occasions since he was a toddler. Social Worker [KC], in a 2017 FGC referral, documented that between 2011 and 2017 [W] had been present at all 13 reported family violence incidents to that point in his life. In addition to abuses and neglect, [W] has also lacked stability in his life. He has been in six OT placements between 2021 and 2023 and prior to this he was moved around his extended whanau after being placed away from his mother in 2014 and later with the … victim … in 2018.
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> 18. The home environment with his aunt [C] was described as chaotic due in part to her mental health issues. Social Worker [KC] (2017 FGC referral) stated, "[C] presents with a highly chaotic and volatile mental state and it has been reported by other professionals that she has presented as psychotic and

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15 From birth to two years of age W lived with his sister. From the ages of two to five, he lived with his mother, [L]. From the ages of five to 10 years old he lived with a whāngai Aunt, [C]. [C] is the victim's daughter. He was removed to the care of the victim at ten years old.

16 *R v W*, above n 12, at [45].

17 There is a suggestion that W claimed at the time that he had done this to himself, although it seems far more likely that his then caregiver was responsible for these injuries. W's claim he was responsible for harming himself is more likely the result of pressure from his caregivers.

> delusional at appointments. This impacts on her ability to provide a stable consistent environment for W or any child in her care. [C] appears to incorporate and impose her own delusional thoughts on children in her care. They have described [C] stating they have demons within them, resulting in them being fearful."
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> 19. As noted in OT materials, the experiences endured by [W] since he was a toddler have detrimentally impacted his sense of safety and wellbeing and also underpin his documented problems with emotional regulation and avoidance. In 2017, before he was placed with [the victim], [KC] opined, "[W] needs to be settled with a long term caregiver where he can be protected and nurtured in an environment that supports his physical and emotional wellbeing. [W] needs an opportunity to develop trusting relationships and receive consistent and reliable feedback from adults in his life."

[6] However, after [W] was placed with [M] in 2018, several more reports of concern were noted in relation to alleged physical abuse of [W] by [M]. The report of Dr Delmage, dated 28 May 2024, summarised the reports:

> Four family group conferences were held and [M] was granted a parenting order and additional guardianship under the Care of Children Act 2004 (June 2019). Between September and November 2018, a report of concern was lodged in relation to physical abuse from [M] but the investigation concluded that abuse was not found and no further action was taken. Between December 2018 and January 2019 a referral was made under s 131A of the Care of Children Act 2004 for a report. No further action was taken at that point.
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> In December 2020 a report of concern was made in relation to physical abuse from [M] but no further action was taken as she subsequently died in the house fire.