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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2024-069-1504
[2026] NZHC 1726

THE KING

v

STORMY LEE RYDER

Hearing:	17 June 2026
Appearances:	C Howard and A Lin for Crown O Salt and C Wright for Defendant M M Dorset and L J B Ameye as standby counsel
Sentence:	17 June 2026

SENTENCING NOTES OF POWELL J

Solicitors/counsel:
Kayes Fletcher Walker, Office of the Crown Solicitor at Manukau
Public Defence Service, Auckland

[1] Stormy Ryder, you appear for sentence today for the manslaughter of your 19-month-old son, Tūwharetoa.[1] You pleaded guilty to the charge at the beginning of your trial after accepting the sentence indication I gave you on 14 April 2026.[2]

[2] In my sentence indication, I indicated that a starting point of six years and three months' imprisonment was appropriate before looking at your personal factors and that there would be an allowance of 10 per cent in the event that you pleaded guilty. While I have previously explained to you the rationale for that starting point, and the 10 per cent discount for a guilty plea, because sentencing is a public function it is necessary for me to traverse those matters again today and a copy of the sentence indication will be annexed to the written version of the notes that I am going through today. Further, and as you have heard this morning, despite your acceptance of the sentence indication, your counsel has submitted that the starting point should be significantly reduced specifically as a result of a psychiatric report prepared since the indication was given. This has led to a longer and more technical sentencing hearing than is normally the case.

The offending

[3] I begin the sentencing by going through the details of your offending.

[4] Those details for which for which you are being sentenced today are as set out in the agreed summary of facts dated 13 April 2026 (agreed summary) which you accepted when you pleaded guilty.

[5] As the agreed summary makes clear, from the beginning of his life Tūwharetoa faced significant challenges and those challenges ultimately imposed a significant burden on you. Together with his twin sister Āwhina, Tūwharetoa was born extremely premature after approximately 27 weeks gestation. You had not received antenatal care during the pregnancy and were not aware you were carrying twins, and it was only two hours after Āwhina was born that Tūwharetoa was delivered.

[6] Both twins had significant complications as a result of their premature births. They spent the first five months of their lives at the Newborn Intensive Care Unit or

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1 Crimes Act 1961, ss 152(a), 160(2)(b), 171 and 177. Maximum penalty: life imprisonment.
2 *R v Ryder* [2026] NZHC 936.

NICU. While at NICU Tūwharetoa suffered a significant brain bleed approximately two months after his birth with secondary hydrocephalus, which is a build-up of the fluid within his brain. This bleed placed him at a higher risk of developing neurodevelopmental complications.

[7] Medical professionals were concerned the children would not survive and as a result prior to Christmas 2022 there was a family hui at which the high level of care required for the twins to survive was discussed. You were present at the hui. The family was told that Tūwharetoa's brain bleed was going to be a long-term issue that would require a lot of medical appointments and follow up for a long period of time. Not long after this a shunt was inserted to drain the fluid from Tūwharetoa's brain.

[8] In April 2023 the twins were discharged from the NICU aged about 19 weeks. Prior to discharge there was a discharge planning meeting to cover how they should be looked after, covering issues such as safe sleep, signs of illness, the follow up that would be given in the community and home care nursing support.

[9] After the twins were discharged the agreed summary records that you were given significant and extensive community support. This included training sessions for Tūwharetoa's significant feeding challenges and the provision of community health care nurses and dietician services staff, a speech and language therapist and a neurodevelopmental therapist, and ongoing appointments at the neurosurgical clinic, and with ophthalmologists, paediatricians and audiologists.

[10] In August 2023 Tūwharetoa was diagnosed with cerebral palsy. This disability severely affected his development to the extent he had compromised vision and hemiplegia/spasticity, which is paralysis and limited control along the left side of his body. The agreed summary records that community health services remained engaged with you in order to provide appropriate supports and ensure Tūwharetoa's feeding, caring and developmental requirements were met.

[11] However between April 2023 and February 2024 the agreed summary sets out medical records show that:

(a) while you attended a number of appointments away from home, there were an even greater number of appointments that were not attended; and

(b) while there were a number of home visits, there were many visits cancelled by you or those professionals were turned away after they arrived at your home.

[12] It is recognised in the agreed summary, and as your then counsel emphasised at the sentence indication hearing, that you did not have access to a vehicle and that you relied on family members for transport, or for social workers, funding from the State and sometimes Uber to attend those appointments that were not at your home. At the same time it is recognised in the agreed summary that throughout this period you were able to seek help and assistance from State and community organisations for assistance with power, phone top ups and food.

[13] Despite these various trials and difficulties, it appears that until around February 2024 Tūwharetoa was making progress. The agreed summary records that there was a progressive trend with Tūwharetoa gaining weight, becoming bigger and ultimately healthier in the months after he was discharged from hospital. On 13 February 2024 Tūwharetoa was weighed in at approximately 8.53 kilograms, which was slim but at the low end of healthy.

[14] This was the last time that Tūwharetoa was weighed. You have said on a number of occasions that around this time you lost confidence in the medical team as the result of the principal community home care nurse getting Police to force entry into your home because neither you, nor your children, could be raised when she went round for a visit.

[15] Whatever the cause, the agreed summary records that between March and June 2024 your record of engagement significantly declined. There appears to have been only one appointment away from your home that was attended and five other appointments for Tūwharetoa were missed. Health professionals and community workers came to your address on 19 occasions and on five occasions they were let inside to speak to you, eight were only spoken to outside the house. On four occasions

you declined to speak to them at all and on three occasions there was no response when they knocked at the door.

[16] The agreed summary goes on to record that from early June 2024 you had sole care of Tūwharetoa. Your mum described Tūwharetoa looking happy and healthy on 2 June 2024. A subsequent visit by Papakura Marae workers on 14 June 2024 did not notice anything amiss other than all of your children appeared to have the flu but it does not appear that any actual assessment was carried out, particularly in respect of Tūwharetoa.

[17] Two Plunket nurses then visited you on the morning of 26 June 2024. They wanted to assess your children, including Tūwharetoa, but you would not let them. You said it was not a good day to visit. At 11:00 pm that same day you went out, leaving all three children at home alone and unattended. It is not clear from the agreed summary when you returned home but it appears that around 5:00 am the next morning you noticed that Tūwharetoa was floppy and unresponsive.

[18] Despite that, it was not until nearly an hour and a half later at 6:23 am on 27 June that you dialled 111 and requested St John Ambulance, advising the emergency dispatcher that there was a one-year-old child that was unresponsive and not breathing. Shortly afterwards, paramedics arrived and began giving assistance to Tūwharetoa, but observing him as non-breathing, pale and emaciated in appearance. They subsequently pronounced Tūwharetoa dead at the scene.

[19] According to the agreed summary, in a subsequent interview with Police you described that you had noticed changes in Tūwharetoa's behaviour, including his eating habits and weight loss in June 2024. You described to Police that while Tūwharetoa previously generally slept through the night, he had been regularly awake and grizzly during this period. He wasn't consuming his regular six to seven bottles a day plus solids as he previously had and by mid-June 2024 you advised that he was only consuming some Weetbix, banana, yoghurt and a bottle. Despite that, it appears by your own admission, that you did not seek medical attention to identify the cause of those symptoms that you had observed.

[20] It is now clear that the calories that Tūwharetoa were taking in was not sufficient to allow him to maintain his body weight, let alone grow, and he was clearly also severely dehydrated. A subsequent post-mortem examination considered the direct cause of death was complications from starvation and dehydration.

[21] There can be no doubt that the agreed summary makes it clear that it was your actions, both what you did and what you did not do over a relatively prolonged period that led to Tūwharetoa's death.

[22] As your mother has said, Tūwharetoa's death has deeply affected her and that his loss has split the wider whānau and this is a matter of concern for her as ultimately Tūwharetoa's death has a wider impact. He is not just your child, he was the child of the whole whānau and his death affects you, the whānau and the wider community.

Approach to sentencing

[23] I now turn to the approach I must take in sentencing you today. Setting a sentence generally involves two steps.[3] First, I must indicate what we call the starting point, being an appropriate period of imprisonment for offending of this type. You will be familiar with this from the sentence indication. This involves identifying the aggravating and mitigating factors and features of your offending, that is the things that make the offending more or less serious, and, as I have already indicated, that was the process followed at the sentence indication hearing. I must then adjust that starting point up or down to take account of your personal circumstances including your plea of guilty which was also specified in the sentence indication.

Purposes and principles of sentencing

[24] In undertaking this analysis, I am required to take account of the general purposes and principles of sentencing set out in the Sentencing Act 2002.

[25] The most pertinent purpose of sentencing is to hold you accountable for the loss of Tūwharetoa's life and the harm that this offending has caused to your family and to the community.[4] The other relevant purposes in sentencing you is to deter you,

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3 *Moses v R* [2020] NZCA 296.
4 Sentencing Act 2002, s 7(1)(a).

and others, from committing the same or similar offences;[5] to denounce the offending;[6] to assist in your rehabilitation and reintegration into the community;[7] and to promote in you a sense of responsibility and acknowledgment of harm that you have caused.[8]

[26] With regard to the principles of sentencing, I must also consider the gravity of the offending and your degree of culpability;[9] the seriousness of these types of offences, as reflected in the maximum penalty of this offence which is life imprisonment;[10] and the need to impose the least restrictive outcome appropriate in the circumstances.[11]

Setting the starting point

The accepted starting point

[27] I turn now to discuss the appropriate starting point for your manslaughter charge. At the sentence indication hearing when this was argued, the Crown submitted that a starting point between five years and six months' imprisonment and seven years and six months' imprisonment was appropriate, and Ms Dorset, on your behalf, submitted that the appropriate starting point was between four years and six months' imprisonment and five years' imprisonment.

[28] In fixing the starting point that I did, I noted that there was and is no tariff decision for manslaughter because the circumstances in which manslaughter can occur vary so much.[12] However, I noted that the Court of Appeal has said the best approach to setting a starting point for manslaughter is to consider the starting points adopted in similar cases.[13]

[29] In my sentence indication I accepted the Crown's submissions that there are several aggravating factors present that make your actions more serious for the

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5 Section 7(1)(f).
6 Section 7(1)(e).
7 Section 7(1)(h).
8 Section 7(1)(b).
9 Section 8(1)(a).
10 Section 8(1)(b).
11 Section 8(1)(g).
12 *Murray v R* [2013] NZCA 177 at [20].
13 At [20].

purpose of setting a starting point. I then went on to consider various cases referred to me by counsel. I considered the cases of *X,*[14] *Parangi,*[15] and *Petersen,*[16] which involved one-off failures on the part of the caregiver that led to the deaths of the children concern, while the cases of *Li,*[17] and *Taylor,*[18] were clearly more serious with ill-treatment over a significantly longer period.

[30] Taking all of these factors into account, I considered a starting point of six years and three months' imprisonment to be appropriate.

Submissions at sentencing

[31] As you have heard today, Mr Wright, on your behalf, now submits at sentencing that as a result of the report by forensic psychiatrist Dr Shanmukh Lokesh which had not been prepared at the time of the sentence indication, the appropriate starting point for the death of Tūwharetoa should be reduced to four years' imprisonment.

[32] In summary Mr Wright submits:

(a) Dr Lokesh's report provides a basis on which to consider your offending as infanticide,[19] and that otherwise the combined effect of your post-traumatic stress disorder (PTSD), childbirth trauma/untreated post-natal depression, and major depressive disorder, which are all referred to in Dr Lokesh's report, which triggered a complex poly-substance abuse disorder, and your loss of trust in support services, means that your moral culpability is substantially reduced.

(b) That the Court should in any event be guided by infanticide cases in setting a starting point for the offending. Mr Wright in particular

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14 *R v X* [2015] NZHC 1244.
15 *R v Parangi* [2019] NZHC 996.
16 *R v Petersen* HC Whangarei CRI-2007-88-899, 20 December 2007.
17 *R v Li* [2021] NZHC 3354.
18 *Taylor v R* [2017] NZCA 574.
19 Crimes Act, s 178.

referred to two cases, *R v T*[20] and *R v Metuatini,*[21] and submits while the nature of the charges in these two cases are less serious than the present, and your case is distinguished by your methamphetamine use (noting this was triggered by psychological issues you were facing), there are significant similarities, particularly with the case of *T*.

(c) Mr Wright submits the aggravating features of breach of trust and turning away assistance that I identified in the indication are mitigated to an extent by the psychological issues you were experiencing at the time as indicated by Dr Lokesh.

[33] Mr Wright has also invited the Court to reconsider at least one of the cases I referred to in the sentence indication which he says actually supports a lower starting point; and he has referred me to another case he submits is comparable.[22]

[34] Against those submissions, Mr Howard submits that the starting point determined in the sentence indication remains appropriate with the matters identified by Dr Lokesh being more appropriately considered when considering personal mitigating factors at the second stage of the sentencing process. In Mr Howard's submission the factors identified by Dr Lokesh may explain how you came to offend, but were not materially causative of the offending, such that it reduces your moral culpability for the offending and thus the starting point. In Mr Howard's submission, the various cases that Mr Wright has relied on are really quite different factual situations.

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20 *R v T* HC Dunedin CRI-2008-12-5987, 18 December 2008. The defendant gave birth to twin girls. They were premature and spent seven weeks in neonatal intensive care. At 22 months of age, the defendant assaulted and killed one of her twins, who was crying incessantly. Expert psychological evidence detailed the defendant was suffering a major depressive episode consequent on the stress of caring for the twins in the context of a conflicted and abusive relationship. A sentence of two years' intensive supervision and 100 hours' community work was imposed.

21 *R v Metuatini* HC Auckland T025795, 18 November 2003. The defendant's six-month-old child was taken to the Cook Island's by her father, who left her there with his mother. The separation caused the defendant significant depression, exacerbated by other pregnancies. The defendant's mother-in-law returned the child without warning. The defendant subsequently inflicted a fatal head injury. A sentence of two years supervision with special conditions was imposed.

22 *R v Ngawhika* [2023] NZHC 520. The defendant had been found guilty of manslaughter at trial, and the jury had rejected a proposed defence of infanticide. The defendant intentionally suffocated her six-month old baby while settling him. The defendant was suffering from severe mental illness including a major depressive episode, and a psychotic episode. A three-year, six-month starting point was adopted, given the death was deliberately caused. A 30 per cent discount was applied for mental illness; 10 per cent for background factors; and a further five for remorse. An end sentence of 12 months' home detention was imposed.

[35] Mr Howard also observed that many of the points that Dr Lokesh found contributed to your offending were indeed taken into account in setting the starting point at the sentence indication, including the stress and uncertainty you were under, your mistrust towards health care professionals and that your methamphetamine addiction played a role in the offending.

[36] Mr Howard also submits that the elements of infanticide are not met as there is a lack of evidence that your mind was "disturbed" due to the effects of childbirth or lactation; and that Tūwharetoa had, in spite of his health issues and your background and circumstances, been gaining weight to his final weigh-in in February 2024.

Discussion — Starting point

[37] Having considered the submissions of counsel and having looked closely at the psychiatric report, I am satisfied that the report provides no basis for revisiting the starting point.

[38] A close analysis of Dr Lokesh's report shows that it does not support Mr Wright's submission. Much of the analysis within that report is based on your own self-reports to him and is otherwise very generalised. In particular, it provides no detail at all about your state of mind at any particular point in including in the critical period between 2 June 2024 and Tūwharetoa's death. It does not explain Tūwharetoa's weight gains up until February 2024 nor the fact that over almost a month you observed physical and other changes occurring to Tūwharetoa which were not happening to Āwhina and yet you took no steps to seek any form of assistance or treatment.

[39] Overall, I consider Dr Lokesh's report falls far short of establishing a basis for any consideration of a change in the starting point, still less that infanticide is relevant to the present case.

[40] I note in particular the definition of "infanticide" is very technical. It provides:[23]

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[23] Crimes Act, s 178(1).

> Where a woman causes the death of any child of hers under the age of 10 years in a manner that amounts to culpable homicide, and where at the time of the offence the balance of her mind was disturbed, by reason of her not having fully recovered from the effect of giving birth to that or any other child, or by reason of the effect of lactation, or by reason of any disorder consequent upon childbirth or lactation, to such an extent that she should not be held fully responsible, she is guilty of infanticide, and not of murder or manslaughter ...

[41] The various components of that definition are not addressed in that report. Dr Lokesh himself does not suggest infanticide, while Mr Wright has not provided any authority or detailed submissions as to how the infanticide test could possibly be met on the basis of Dr Lokesh's report. It therefore follows there is no basis for considering the appropriate starting point in terms of infanticide or otherwise considering the infanticide cases cited by Mr Wright.

[42] More fundamentally, and importantly, for the purposes of your sentence this morning, you have pleaded guilty to manslaughter. You accepted responsibility for your role in the killing of Tūwharetoa. In doing so, you have accepted the agreed summary. As I have detailed this summary sets out in detail what you have done and what you failed to do and it is this that underpins the starting point for your sentencing — your actions and omissions that led directly to the death of Tūwharetoa.

[43] Given this position and my conclusion, for the purposes of s 116 of the Criminal Procedure Act 2011, that there is no new information that materially affects the basis upon which the sentence indication was given, there can be no basis for further discussion about the appropriateness of the starting point identified in the sentence indication. Instead, I reiterate my comments in the sentence indication that there are a number of factors that make your actions more serious for the purposes of setting a starting point and not explained by any lack of trust:

> [31] First, Tūwharetoa's extreme vulnerability as a result of his age and medical condition, and in particular his cerebral palsy, which made him entirely dependent on you for food, drink and the provision of medical attention if he needed it.
>
> [32] The failure to ensure that Tūwharetoa was properly fed, watered and/or provided medical assistance, even as you noticed his condition was changing, amounted to a significant breach of trust on your part.
>
> [33] Linked to this I accept Mr Howard's submission that the degree of neglect on your part was significant. It is evidenced by not only the overall loss of weight between February 2024 and the date of Tūwharetoa's death,

> where he weighed only 6.23 kilograms, but also the fact that despite admitting that you noticed changes in behaviour, you took no steps to seek medical or other help, up to and including the day before his death when you refused to let the two Plunket nurses see Tūwharetoa or his sisters and instead, that evening, you left the children alone for some hours. Even after finding Tūwharetoa unresponsive, it was still some 90 minutes before you dialled 111.

[44] I therefore confirm my assessment of the relevant cases cited for comparison. As a result, the starting point of your sentence remains six years and three months' imprisonment.

Personal factors

[45] I turn now to consider the various matters personal to you. I accept counsels' submissions that you have no personal factors that make your offending more serious, that would require an uplift to the starting point.

[46] I now turn to your personal mitigating factors, that is the factors that make your offending less serious. As well as Dr Lokesh's report; I have before me an alcohol and other drug report detailing your issues with alcohol and drugs, and a cultural report detailing your personal background which I have received pursuant to s 27 of the Sentencing Act.

Personal background and addiction

[47] Counsel are agreed that a reduction of 20 to 30 per cent is appropriate for your personal background and addiction issues.

[48] This is because the Supreme Court has previously stated that if an offender's background factors help explain how they came to offend, they will amount to a causative contribution and be relevant to the sentence.[24]

[49] In this case, both parties broadly agree that the psychiatric report and the alcohol and drugs report outline how your background contributed to your methamphetamine addiction and the relationships that you formed with others, and how these contributed to your offending, and thus a discrete reduction should be applied for those factors.

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[24] *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [109].

Discussion

[50] Having considered the reports carefully I agree with counsel it is important to recognise a wide range of matters which were appropriately taken into account in determining your final sentence. These include:

(a) Your family background including physical, mental and other trauma that you suffered growing up and later in life in which has resulted in a complex PTSD diagnosis and the possibility of a range of other disorders, including major depression and post-natal depression. It appears quite clear that these matters ill-equipped you for the significant challenge of caring for Tūwharetoa with his complex needs which required a high degree of care and commitment on an ongoing basis.

(b) Your separation too from your culture.

(c) The various antisocial influences, including that of your one-time partner which amongst other things clearly contributed to your drug and alcohol issues.

(d) The drug and alcohol issues themselves which clearly impacted on your ability to care properly for Tūwharetoa.

[51] On the other hand it is inappropriate under this head to give credit for psychiatric conditions identified as arising since your offending, such as prolonged grief disorder.

[52] Overall I consider an allowance of 25 per cent is appropriate for personal background and addiction issues.

Remorse/rehabilitation

[53] I now turn to your remorse and your prospects of rehabilitation.

[54] Mr Wright submits that an additional 10 per cent allowance is appropriate to reflect your remorse and prospects of rehabilitation. Relying in particular on

Dr Lokesh's observations and comments in the alcohol and drug report, and noting that you wish to seek placement at Odyssey House, he submits that you are deeply remorseful for causing the death of Tūwharetoa, and that you are willing to engage in all available rehabilitation.

[55] As you have heard, Mr Howard submits that only a relatively small reduction for your remorse may be available given your remorse has come very late and does not go much further than an acceptance of responsibility for your son's death.

Discussion

[56] I agree with Mr Howard that any allowance for remorse must be limited as it is clear from your demonstrated lack of engagement right up until the beginning of your trial that any acceptance of responsibility has come very late in the piece. I accept, however, that part of that is due to your inability to really face the consequences of what you have done for a really long time. It was only when the trial began that you were forced to confront it and at that point you did accept responsibility for what happened to Tūwharetoa.

[57] As a result, given your acceptance of responsibility at the beginning of the trial and since then, perhaps as a result of becoming drug-free while in custody, I am prepared to accept the observation of those who have assessed you and your own statement to the Court today that you are genuinely remorseful for what has occurred, and, as a result, I consider a five per cent allowance is appropriate.

[58] I likewise accept that, having been drug-free for a period, the reports show that you have a recent but genuine desire to commence rehabilitation as soon as possible with a goal of eventually reuniting your family and being able to care once more for your daughters at some point in the future. For those prospects of rehabilitation, I am prepared to give a further allowance of five per cent so as to encourage you along that path.

Guilty plea

[59] Finally and as provided for in the sentence indication, I have concluded a 10 per cent allowance is appropriate for your guilty plea. While your guilty plea was

made on the second day of trial, I accepted that a plea would save significant judicial resources, time and financial cost given the trial was going to be lengthy, and the fact you were self-representing and had difficulties in being able to review the evidence prior to trial, notwithstanding that many of those problems were likely self-inflicted.

[60] These allowances combined come to 45 per cent and, after deducting that figure from the starting point, results in an end sentence of three years and five months' imprisonment.

Sentence

[61] Ms Ryder please stand.

[62] For the manslaughter of Tūwharetoa you are hereby sentenced to three years and five months' imprisonment. At the request of Mr Wright, I make an order pursuant to s 205(2)(a) of the Criminal Procedure Act 2011 to prevent disclosure of the written reports filed in support of your sentencing, including to the extent that these are reproduced in the written submissions of defence counsel. For the avoidance of doubt, the order does not extend to the oral submissions made in Court today.

[63] You may stand down.

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Powell J

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CRI-2024-069-1504
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THE KING

v

STORMY LEE RYDER

Hearing:	13 April 2026
Appearances:	C Howard and A Lin for the Crown M M Dorset and L Ameye as counsel for the Defendant
Judgment:	14 April 2026

SENTENCE INDICATION OF POWELL J

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[1] As indicated, we begin today with a decision on the sentence indication; the hearing for which was held yesterday afternoon.

[2] Ms Ryder, at your request made immediately before the start of your trial, I provide a sentence indication on the single charge of manslaughter that arises out of the death of your 19-month-old son, Tūwharetoa Tahau on 27 June 2024.[1] As discussed yesterday, the indication that follows is based on the summary of facts dated 13 April 2026 which is agreed only for the purposes of this indication.

What happened?

[3] As the agreed summary makes clear, from the beginning of his life Tūwharetoa faced significant challenges and those challenges ultimately imposed a significant burden on you. Together with his twin sister Āwhina, Tūwharetoa was born extremely premature after approximately 27 weeks gestation. You had not received antenatal care during the pregnancy and were not aware you were carrying twins, and it was only two hours after Āwhina was born that Tūwharetoa was delivered.

[4] Both twins had significant complications as a result of their premature births. They spent the first five months of their lives at the Newborn Intensive Care Unit (NICU). While at NICU Tūwharetoa suffered a significant brain bleed approximately two months after his birth with secondary hydrocephalus, which is build-up of the fluid within his brain. This bleed placed him at a higher risk of developing neurodevelopmental complications.

[5] Medical professionals were concerned the children would not survive and as a result at Christmas 2022 there was a family hui at which the high level of care required of the twins was discussed, if they were to survive. The family was told that Tūwharetoa's brain bleed was going to be a long-term issue that would require a lot of medical appointments and follow up for a long period of time. And not long after this a shunt was inserted to drain the fluid from Tūwharetoa's brain.

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1 Crimes Act 1961, ss 152(a), 160(2)(b), 171 and 177. Maximum penalty: life imprisonment.

[6] Not long after this, in April 2023, the twins were discharged from the NICU approximately 19 weeks after their birth. Prior to discharge there was a discharge planning meeting to cover how they should be looked after, covering issues such as safe sleep, signs of illness, the follow up that they would be given in the community and home care nursing support.

[7] After discharge the agreed summary records that you were given significant and extensive community support. This included training sessions for Tūwharetoa's significant feeding challenges and the provision of home care nurses, a community dietician, a speech and language therapist and a neurodevelopmental therapist, and appointments to see the neurosurgical clinic, the Neonatal clinic and Ophthalmology.

[8] In August 2023 Tūwharetoa was diagnosed with cerebral palsy. This disability severely affected his development to the extent he had compromised vision and hemiplegia/spasticity, which is paralysis and limited control along the left side of his body. The agreed summary records that community health services remained engaged with you in order to provide appropriate supports and ensure Tūwharetoa's feeding, caring and developmental requirements were met.

[9] However between April 2023 and February 2024 the agreed summary sets out that medical records show that while you attended a number of appointments away from home, there were an even greater number of appointments that were not attended and while there were a number of home visits, there were many visits cancelled by you when professionals had indicated an intention to come to your home: those appointments were cancelled or those professionals were turned away after they arrived at your home.

[10] It is recognised in the agreed summary, and as Ms Dorset emphasised on your behalf, that you did not have access to a vehicle and that you relied on family members for transport, or on social workers, funding from the State and sometimes Uber to attend those appointments that were not at your home.

[11] Despite these trials and difficulties, it appears that until around February 2024 Tūwharetoa was making progress. The agreed summary records that there was a

progressive trend with Tūwharetoa gaining weight, becoming bigger and ultimately healthier in the months since he was discharged from hospital. On 13 February 2024 Tūwharetoa was weighed at approximately 8.53 kilograms, which was slim but at the low end of healthy.

[12] This was the last time that Tūwharetoa was weighed. You have said through Ms Dorset that around this time you lost confidence in the medical team as the result of the principal community home care nurse getting Police to force entry into your home because neither you, nor your children, could be raised when she went round for a visit.

[13] Whatever the cause, the agreed summary records that between March and June 2024 your record of engagement significantly declined. There appears to have been only one appointment away from your home that was attended and five other appointments for Tūwharetoa were missed. Health professionals and community workers came to your address on 19 occasions and on five occasions they were let inside to speak to you, eight were only spoken to outside the house. On four occasions you declined to speak to them at all and on three occasions there was no response when they knocked on the door.

[14] The agreed summary goes on to record that from early June 2024 you had sole care of Tūwharetoa. Your mum described Tūwharetoa looking happy and healthy on 2 June 2024. A subsequent visit by Papakura Marae workers on 14 June 2024 did not notice anything amiss other than all of your children appeared to have the flu but it does not appear that any actual assessment was carried out, particularly in respect to Tūwharetoa.

[15] Two Plunket nurses then visited you on the morning of 26 June 2024. They wanted to assess your children, including Tūwharetoa, but you would not let them. You said it was not a good day for a visit. At 11 pm that same day you went out, leaving all three children at home alone and unattended. It is not clear from the agreed summary when you returned home but it appears that around 5 am the next morning you noticed that Tūwharetoa was floppy and unresponsive.

[16] Despite that, it was not until nearly an hour and a half later at 6.23 am on 27 June that you dialled 111 and requested St John Ambulance, advising the emergency dispatcher that there was a one-year-old child that was unresponsive and not breathing. Shortly afterwards, paramedics arrived and began giving medical assistance to Tūwharetoa, but observed him as non-breathing, pale and emaciated in appearance. They subsequently pronounced Tūwharetoa dead at the scene.

[17] According to the agreed summary, in a subsequent interview with Police you described that you had noticed changes in Tūwharetoa's behaviour, including his eating habits and weight loss during the month of June 2024. You described to Police that while Tūwharetoa previously generally slept through the night, he had been regularly awake and grizzly during this period. He wasn't consuming his regular six to seven bottles a day plus solids as he previously had and by mid-June 2024 you advised that he was only consuming some Weetbix, banana, yoghurt and a bottle. Despite that, it appears by your own admission, that you did not seek medical attention to identify the cause of those symptoms that you had observed.

[18] It is now clear that the calories that Tūwharetoa was taking in was not sufficient to allow him to maintain his body weight, let alone grow, and he was clearly also severely dehydrated. A subsequent post-mortem examination considered the direct cause of death was complications from starvation and dehydration.

Approach to sentence indication

[19] The sentence indication that I am providing this morning to you Ms Ryder is not the same as sentencing, but I follow the same approach. Setting a sentence generally involves two steps.[2] First, I must indicate the starting point that the alleged offending would attract. This involves identifying what are called aggravating and mitigating factors of your offending; that is matters that make your offending more or less serious and this enables me to come up with an appropriate term of imprisonment. Second, I must take into account any of your personal circumstances that are relevant, both positive and negative, including any deduction that you might receive if you plead guilty. As not all relevant information appears to be before the Court at this time, this

2 *Moses v R* [2020] NZCA 296.

means for the purposes of this indication my assessment of the second stage will be limited to the appropriate allowance for your guilty plea if you accept this indication and plead guilty. Any other personal factors that need to be taken into account would wait until sentence.

Purposes and principles of sentencing

[20] In undertaking my analysis, I am required to take into account the general purposes and principles of sentencing set out in the Sentencing Act 2002.[3]

[21] Having considered the submissions presented and with reference to the agreed summary, I consider the following purposes are relevant:

(a) first, the need to hold you accountable for the loss of Tūwharetoa's life and the harm this offending has caused to you and your family;[4]

(b) to promote in you a sense of responsibility and acknowledgement of the harm that you have done;[5]

(c) to denounce your conduct;[6]

(d) to deter you and others from committing similar offences;[7] and

(e) ultimately, to assist in your rehabilitation and reintegration into the community.[8]

[22] With regard to the principles of sentencing I must also consider the gravity of the offending and your degree of culpability;[9] the seriousness of these types of

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3 Sentencing Act 2002, ss 7–8.
4 Section 7(1)(a).
5 Section 7(1)(b).
6 Section 7(1)(e).
7 Section 7(1)(f).
8 Section 7(1)(h).
9 Section 8(1)(a).

offences;[10] and the need to impose the least restrictive outcome appropriate in the circumstances.[11]

Starting point for manslaughter

[23] I turn now to consider the appropriate starting point for the manslaughter charge.

Submissions for Ms Ryder

[24] On your behalf, Ms Dorset submitted a starting point of between four years and six months' imprisonment and five years' imprisonment would be appropriate. Ms Dorset noted that comparable cases are somewhat sparse. Ms Dorset accepted that the offending as set out in the agreed summary is more serious than in the case of *Parangi,* that she mentioned in her submissions, where the defendant was convicted of manslaughter of her grandchild for leaving the victim for over an hour in a vehicle, where high temperatures resulted in the child's death.[12] In that case a starting point of three years and eight months' imprisonment was adopted.[13] Ms Dorset noted that you were still attempting to feed Tūwharetoa throughout the period prior to his death, but accepted that the period in failing to take any steps to obtain medical intervention was much greater than that in *Parangi*, given Tūwharetoa's body weight must have diminished in the course of days, rather than hours.

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10 Section 8(1)(b).

11 Section 8(1)(g).

12 *R v Parangi* [2019] NZHC 996. Ms Parangi, her daughter, and her daughter's partner were convicted of manslaughter of Ms Parangi's eight-month-old grandson. Ms Parangi left the victim sleeping in a car at 12:30 pm upon returning home from a drive with her daughter. The car was parked in full sun with the windows, doors and sunroof closed, and reached high temperatures. Ms Parangi attended to washing and smoked synthetic cannabis, before falling asleep. Ms Parangi's daughter, and her partner, smoked synthetic cannabis and went to bed. The victim was removed from the vehicle at around 2:45pm /3:00 pm at which point he was either critically unwell or deceased. Ms Parangi's daughter noticed him still, but put the victim back in the cot, thinking he was asleep. She found him lifeless in his cot when she woke at 6:30 pm. The cause of death likely resulted from dehydration and hyperthermia. Fitzgerald J adopted a starting point of 3 years and 8 months' imprisonment for Ms Parangi. The Court of Appeal upheld Ms Parangi's sentence on appeal: *Parangi v R* [2019] NZCA 229. Lang J adopted a starting point of four years and two months' imprisonment for Ms Parangi's daughter; and two years and nine months' imprisonment for her partner: *R v Neil* [2017] NZHC 1494.

13 *R v Parangi*, above n 12, at [44].

[25] Ms Dorset acknowledged that the gravity of the offending is significant but submitted it must be tempered against the difficulties that you were subjected to, and that must affect the starting point given the nature of the offence. Particular factors that Ms Dorset noted were the fact that Tūwharetoa required significantly more attention due to being medically compromised; that you were isolated and had lost trust in medical institutions responsible for Tūwharetoa; and the fact that your two daughters continued to remain healthy.

Submissions of the Crown

[26] In his submissions Mr Howard, on behalf of the Crown, has identified a number of aggravating features, in particular the vulnerability of Tūwharetoa; the breach of trust represented by the fact that you were Tūwharetoa's mother; the degree of neglect illustrated in the agreed summary; and the extent of harm suffered, namely the fact that Tūwharetoa has died.

[27] With reference to a number of cases, Mr Howard submitted an appropriate starting point was between five years and six months' imprisonment and seven years and six months' imprisonment.

Discussion

[28] I begin my analysis by noting that manslaughter carries a maximum penalty of life imprisonment.[14] There is not what we call a tariff case or guideline decision for manslaughter because the circumstances in which manslaughter can occur vary so much.[15] Rather the Court of Appeal has indicated the best approach to setting a starting point for manslaughter is to consider the starting points adopted in similar cases,[16] and as you have heard, there have been a number of cases referred to me by counsel at the hearing yesterday and that was why we spent such a lot of time talking about them.

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14 Crimes Act, s 177.
15 *Murray v R* [2013] NZCA 177 at [20].
16 At [20].

[29] In this case I acknowledge at the outset that the amount of care required by Tūwharetoa and indeed Āwhina, imposed a significant burden on you. That burden must, however, be seen in the context of the support that was provided and detailed in the agreed summary as well as the nature of the charge. The failure to provide food and drink over a prolonged period, and the failure to not seek any medical attention when Tūwharetoa's condition was clearly changing, are significant breaches which occurred over a prolonged period and notwithstanding the support that was available to you.

[30] As a result, I accept Mr Howard's submissions that there are a number of aggravating factors present, that is factors that make your actions more serious for the purposes of setting a starting point.

[31] First, Tūwharetoa's extreme vulnerability as a result of his age and medical condition, and in particular his cerebral palsy, which made him entirely dependent on you for food, drink and the provision of medical attention if he needed it.

[32] The failure to ensure that Tūwharetoa was properly fed, watered and/or provided medical assistance, even as you noticed his condition was changing, amounted to a significant breach of trust on your part.

[33] Linked to this I accept Mr Howard's submission that the degree of neglect on your part was significant. It is evidenced by not only the overall loss of weight between February 2024 and the date of Tūwharetoa's death, where he weighed only 6.23 kilograms, but also the fact that despite admitting that you noticed changes in behaviour, you took no steps to seek medical or other help, up to and including the day before his death when you refused to let the two Plunket nurses see Tūwharetoa or his sisters and instead, that evening, you left the children alone for some hours. Even after finding Tūwharetoa unresponsive, it was still some 90 minutes before you dialled 111.

[34] I likewise accept Mr Howard's analysis of the cases that have been referred for my consideration. I accept that the cases of *X*,[17] *Parangi*,[18] and *Petersen*,[19] all involved one-off failures on the part of the caregiver that led to the deaths of the children concerned. The cases of *Li*,[20] and *Taylor*,[21] were clearly more serious with ill-treatment over a significantly longer period, while those cases where the charges involved violence by a third party were not relevant.[22]

[35] Taking these various matters together, I consider that a starting point falling in the middle of the available range identified by the Crown, namely six years and

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17 *R v X* [2015] NZHC 1244. A health professional who was extremely tired and concerned about work responsibilities forgot about her child in the rear seat of a car, parked at work and went inside and started working. The child died of heatstroke and dehydration. The defendant pleaded guilty to a charge of manslaughter but was ultimately discharged without conviction.

18 *R v Parangi*, above n 12.

19 *R v Peterson* HC Whangarei CRI-2007-88-899, 20 December 2007. The defendant pleaded guilty to a charge of manslaughter of her 18-month-old daughter. While under the influence of methamphetamine, the defendant formed the honest, but irrational, belief that to protect her child, she needed to take the child to the bush where she left her. The child died. The Judge adopted a starting point of 5 years' imprisonment.

20 *R v Li* [2021] NZHC 3354. The defendant was found guilty of manslaughter for failing to provide her husband, as his primary caregiver, with the necessaries of life. The victim suffered two strokes. He was then capable of feeding himself but required assistance with showering and dressing. The defendant failed to adequately care for the victim and declined support from community members. She failed to assist him with going to the bathroom and receiving sufficient medical assistance. The victim died of sepsis due to infected pressure wounds on his sacrum and buttocks. The pathologist attending the scene observed the victim was in poor physical condition and had experienced significant weight loss over a period of nine months. The Judge fixed a starting point of 8 years' imprisonment.

21 *Taylor v R* [2017] NZCA 574. The appellant, Cindy Taylor, was convicted of manslaughter by failing to provide the necessaries of life to her 76-year-old mother who died of dehydration and malnutrition. She was directly responsible for the victim's care. The victim suffered 14 fractures to her ribs and sternum. She was not provided any pain relief but put to bed. In the 10-20 days before her death, the victim's health declined significantly, and she was completely dependent on the care of others in the household. She began to urinate and defecate in her bed but was not cleaned. Prior to her death, she may have gone between 10 to 15 days without food, and four to five days without water. The Court of Appeal considered the starting point of 12 years' imprisonment, imposed in the High Court, was appropriate.

22 *R v Kuka* [2009] NZCA 572; and *R v Harris* HC Wellington CRI-2004-78-1816, 26 August 2005. In *R v Kuka* the defendant was convicted of two counts of manslaughter of her three-year-old daughter. The victim suffered violence and abuse at the hands of the defendant's partner and his brother, which the defendant was aware of, and ultimately led to the victim's death. The Court of Appeal upheld the starting point of 7 years' imprisonment adopted for manslaughter by failing to provide the necessities of life (medical assistance), and an uplift of 2.5 years applied for manslaughter by failing to protect the child from violence.
In *R v Harris,* the defendant pleaded guilty to manslaughter by failing to provide the necessaries of life and a charge of cruelty to a child. The defendant failed to protect her 7-month-old daughter from violence caused by her partner. The victim ultimately died due to a multiplicity of severe injuries. The Court considered a starting point of eight to ten years' imprisonment was appropriate. The defendant was sentenced to 7 years' imprisonment for manslaughter by failing to provide the necessaries of life and 4 years' imprisonment for a charge of cruelty to a child (concurrent).

three months' imprisonment, is appropriate for the various breaches and failures that resulted in Tūwharetoa's death.

Guilty plea

[36] turn now to the appropriate allowance for a guilty plea at this stage. I note that you first appeared in Court on 5 March 2025 when you pleaded not guilty. There has been no change to that plea since that time. Despite that, as you have heard, both Mr Howard and Ms Dorset agree that a guilty plea discount of between 10 and 15 per cent is warranted in all of the circumstances.

[37] Both counsel acknowledge there have been difficulties with your engagement, including in instructing counsel and the fact that you are self-represented. However, counsel submit that this trial will be lengthy, and a guilty plea will save significant judicial resources, time and financial cost.

Discussion

[38] Although, superficially an allowance of 10 to 15 per cent would appear to be unusual, I nonetheless accept counsel's submissions with regard to the context of this case, and I do take into account the fact that you are self-represented and the fact that you have recently had difficulties in your ability to review the evidence in the period immediately before trial, as well as the fact that even at this late stage there will be a significant saving in time and cost if the trial does not need to take place.

[39] On the other hand, I acknowledge that a number of these issues are essentially self-inflicted and are the result of your own failure to engage in preparation for your trial over a prolonged period, even though for much of that period you were on bail.

[40] Overall, I consider a 10 per cent allowance is appropriate should you plead guilty to this indication.

Sentence indication

[41] In conclusion, my indication to you today is:

(a) A starting point of six years and three months' imprisonment.

(b) An allowance of 10 per cent for pleading guilty at this point.

[42] In addition, in the event that you plead guilty to this indication I leave open whether there may be additional allowances available in mitigation at sentencing.

Non-publication

[43] For completeness, I note that it is an offence for any person to publish information about the fact that a sentence indication has been sought or what indication has been given until the charge has either been dismissed or you have been sentenced.[23]

Time for acceptance

[44] Ms Ryder, this indication will remain open until 10 am on 15 April 2026. Effectively what I am saying is that you will have to make your decision on this after you have had a chance to talk to Ms Dorset and Mr Ameye before we start court tomorrow morning. So that is when you have to make a decision by, because if we are going to go ahead with the trial, we can't have the distraction of this indication hanging over us.

[45] So that is my indication. This will be typed up shortly and as soon as it has been typed up a written copy of it will be given to you and to counsel.

Powell J

[23] Criminal Procedure Act 2011, s 63.