ORDER PROHIBITING PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF VICTIM PURSUANT TO S 202 OF THE CRIMINAL PROCEDURE ACT 2011. SEE PARAGRAPH [39]. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360349.html

ORDER PROHIBITING PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF DEFENDANTS PURSUANT TO S 200 OF THE CRIMINAL PROCEDURE ACT 2011. SEE PARAGRAPH [39]. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360346.html

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CRI-2025-085-1584
[2026] NZHC 3425

THE KING

v

[M]
[A]

Appearances: C T Hislop and L R van der Lem for Crown
S A Saunderson-Warner for Defendant [M]
P H Mitchell for Defendant [A]

Sentenced: 23 October 2026

SENTENCING NOTES OF HEINE J
[M]

Introduction

[1] [M], you appear for sentence having pleaded guilty to one charge of manslaughter.[1]

[2] As you will recall, you came before me for a sentence indication in July of this year. I indicated that, if you were to plead guilty at that point, I would adopt a starting point of four years and three months' imprisonment for your charge, and apply a 25 per cent reduction for your guilty plea. That brought your sentence down to three years and two months' imprisonment. I indicated that you might also receive allowances for other personal factors, depending on what material I received before the sentencing hearing.

[3] You accepted that sentence indication and have pleaded guilty. And I have now received some reports about your personal factors which I will discuss in more detail shortly. I now need to consider what is the appropriate sentence for you taking account of those factors.

Indication

Facts

[4] I am not going to set out the factual background of your offending in full or read out my sentencing indication from July again. That is appended to these sentencing notes and forms part of it.

[5] In short, however, in August 2023 your daughter [D] died at the age of six while she was in the care of your sister. [D] had complex medical needs and regularly needed medical attention. You knew that she needed urgent medical attention in the event of certain symptoms. Over a period of three days, your sister texted you multiple times about symptoms she was experiencing and asking you to take her to the hospital. You did not do so. You have accepted that you knew [D] was not okay, but you were struggling with personal circumstances at the time.

---

1 Crimes Act 1961, ss 150A, 152, 160(2)(b) and 171; maximum penalty of life imprisonment.

[6] On 30 August 2023, [D] was found unconscious and was unable to be revived by paramedics. The expert evidence showed that if she had received prompt medical intervention it is "highly likely" she would not have died.

Starting point

[7] In my indication, I noted that the relevant factors when assessing your culpability were [D's] vulnerability, your breach of her trust, the serious long-term harm caused by your inaction, and the temporal extent of this inaction.[2] As I said, there is no suggestion that you intentionally mistreated [D], and it was clear to me that you loved her very much and were skilled in looking after her. But it was up to you as her mother to make sure she was okay. I accepted that you had personal issues, but all you needed to do was call 111.

[8] Based on those factors and cases referred to by your lawyer and the Crown, I decided that the appropriate starting point for your conduct alone was four years and nine months. However, I reduced that starting point by six months on account of your mental health issues at the time. I noted that your crime was not an unlawful act, but a failure to perform your duty as [D's] parent. I accepted that there was a clear link between your depressive illness and your failure to take action in late August 2023.

[9] That resulted in a starting point of four years and three months' imprisonment.

Guilty plea

[10] As you accepted my sentencing indication and pleaded guilty, I allow the maximum 25 per cent for your guilty plea.

Other personal factors

[11] I now turn to consider your personal factors. This material comes from a psychological report, a character reference from a provider of Whānau Services, a letter from Catholic Social Services, and a Provision of Advice to Courts report (what we call a PAC report).

---

2 *Taylor v R* [2017] NZCA 574.

[12] You have one prior conviction, but this was for driving with excess breath alcohol. This is largely unrelated to this offending, which was an isolated event.

[13] The first mitigating factor to note in your case is your background. You grew up in a large family that moved around a lot, and were neglected and abused yourself as a child. In the two months prior to [D's] death, you were feeling overwhelmed by the daily care she required and had difficulties in your relationship with an ex-partner. You were using a lot of cannabis and MDMA to cope, and you got into debt and were forced to sell drugs to settle that debt. You felt trapped and did not know what to do when your sister contacted you.

[14] I have already taken into account your mental health issues at the time when reducing your starting point. But I can also see how your difficult background led you to that point. I allow 10 per cent for that factor.

[15] In terms of remorse and rehabilitation, you acknowledge the impact your offending has had on your wider family. You have described the pain your offending and [D's] death has caused your eldest daughter. You regret the harm caused to your children and the position you have put your sister in, and you acknowledge that greater harm will be done to your children if you are sentenced to a period of imprisonment today. The PAC report writer assesses your expression of remorse for your actions as genuine.

[16] Recently you have begun engaging with a kaupapa Māori programme where you live. This programme centres on healing from loss through discovery. A practitioner there has observed the way you care for your daughter and the whanau support you have, and looks forward to working with you more. A community social worker also tells me that you are engaging with a range of support services where you live to support the wellbeing of your children. I allow 10 per cent for your remorse, character and concrete efforts at rehabilitation.

[17] The final factor is the impact a term of imprisonment would have on you and your family. You are the sole parent and primary caregiver of your two daughters currently aged four and 13, and if you are sentenced to imprisonment this would cause

them even greater harm than they have already experienced from the death of their sister.[3] It would disrupt the secure and positive attachment which they have with you and deprive them of both parental figures.

[18] There is also some suggestion that imprisonment would be disproportionately difficult for you although this is not a strong factor here. You suffered a traumatic brain injury in late 2024 when falling from a significant height, which caused internal bleeding and left you deaf in one ear. Dr Justin Barry-Walsh says that you now appear to suffer from memory problems which may connect to that brain injury. I allow 10 per cent for the impact imprisonment would have on your family and to a lesser extent you.

[19] That results in a total reduction for mitigating factors of 30 per cent. Combined with the reduction for a guilty plea, this provides a total reduction of 55 per cent.

Nominal end sentence

[20] That results in a nominal end sentence of **one year and eleven months' imprisonment.**

Home detention

Is home detention appropriate?

[21] Because that nominal end sentence is two years or less, it is what we call a "short-term sentence of imprisonment". That means I can consider whether to impose a sentence of home detention instead.[4] You have proposed your current address for this purpose, where you live with your mother, brother and two children. The address has been assessed as technically suitable for home detention, and all adult occupants of the address have given their informed consent for you to be sentenced there. The PAC report says that you have consented to the standard and proposed special conditions.

---

3 See discussion in *Philip v R* [2022] NZSC 149.
4 Sentencing Act 2002, ss 15A and 80A.

[22] Home detention is a significant sentence in its own right,[5] and imposes major restrictions on a person's liberty.[6] But it is not the same thing as imprisonment and it is not nearly as restrictive.[7] There is no presumption in the Sentencing Act 2002 either for or against commuting a short-term sentence of imprisonment to one of home detention.[8] What is required is:[9]

> …a considered and principled choice between the two forms of sentence, recognising that both serve the principles of denunciation and deterrence, and identifying which of them better qualifies as the least restrictive sentence to impose taking into account all the purposes of sentencing.

[23] The Crown does not oppose you being sentenced to home detention.

[24] There are a number of reasons why I am satisfied that a sentence of home detention is appropriate here.

[25] First, it would provide you with a chance to engage in rehabilitation while remaining connected to your family and community, which prison could not. Home detention would hold you accountable for your actions while advancing your rehabilitation and reintegration into the community. This would ultimately serve the community far better than a period of imprisonment would do.

[26] Secondly, your offending occurred in a very context-specific scenario, and you are at low risk of offending again. The PAC report writer assesses your risk factors as mental health and drug use, and you are currently working on both of those through counselling.

[27] Thirdly, your conviction for manslaughter is punishment in itself, and carries lasting consequences.

[28] Fourth, from a practical point of view imposing a sentence of imprisonment is unlikely to have significant deterrent effect for the community at large. There is a real

---

5 *Fairbrother v R* [2013] NZCA 340 at [28].
6 *R v Bisschop* [2008] NZCA 229 at [19].
7 At [19].
8 *R v Vhavha* [2009] NZCA 588 at [29] per William Young P, dissenting, later adopted in *Osman v R* [2010] NZCA 199 at [20].
9 *Fairbrother*, above n 5, at [30].

distinction between this case and other cases involving the neglect of children. Your failure to seek medical care for a severely disabled child is an unusual fact scenario.

[29] Finally, there is greater societal interest in you continuing to look after your children, rather than them being taken you from them and sentencing you to a term of imprisonment.

[30] The impact you going to prison would have on your children is the most important factor in my analysis. Little would be gained from you going to prison in terms of sentencing objectives. You will have to live with your actions and your manslaughter conviction for the rest of your life. I am satisfied that a period of home detention is the least restrictive sentence appropriate in the circumstances to meet the gravity of your offending.

What conditions are appropriate?

[31] The PAC report writer recommends I impose a set of special conditions, in addition to the standard conditions of home detention under s 80C of the Sentencing Act. These include not to possess, consume or use any alcohol or drugs not prescribed to you, and to attend assessments, counselling, treatment or programmes as directed by and to the satisfaction of a probation officer.

[32] I may only impose special conditions of home detention if I am satisfied that there is a significant risk of you committing further offending, and that standard conditions alone would not adequately reduce the risk, and the imposition of special conditions would reduce the likelihood of you further offending through your rehabilitation and reintegration.[10]

[33] I have no doubt, given the circumstances of your offending, that the proposed conditions would assist in your rehabilitation and reintegration. The difficulty I have here is that there is not a significant risk of you committing further offending without them. Accordingly, I decline to impose the special conditions sought. I note that attendance at programmes is covered by the standard conditions in any event.

---

[10] Sentencing Act, s 80D(2).

What term of home detention is appropriate?

[34] Finally, I need to determine the term of your sentence of home detention. This period must not be for less than 14 days or more than 12 months.[11] A common approach is to halve the term of imprisonment the Judge would have otherwise imposed, but this is not legally required and I must instead evaluate all of the circumstances.[12]

[35] I have concluded that you being sentenced to a term of imprisonment would be disproportionately severe, primarily because of the impact it would have on your children. But your offending was serious and led to your child's death. I consider that a 12 month term of home detention is the least restrictive sentence that is appropriate in the circumstances.

Name suppression

[36] I now turn to consider your application for permanent name suppression. You have applied for permanent name suppression of your name and that of [D] on the basis that publication of the names would cause undue hardship to your other children, who are [D's] sisters.[13] The Crown does not oppose the granting of name suppression.

[37] I am satisfied that publication of your name and [D's] name would cause undue hardship to your other children aged 4 and 13 for whom you have full time care. They share the same surname as you and their sister and you all live outside the main centres. In the case of the 13 year old, there is a clear risk that publication of the names would result in public discussion and scrutiny about her sister's death and her mother's role in that death. There is concern that intrusive questions or different treatment at school may impact on school attendance or participation. The four year old will start school shortly and there is also a real prospect that her link to you and the details of the offending could become known within her school community, which would be a significant burden for a young child to bear.[14]

---

11 Section 80A(3).
12 *Bisschop*, above n 6, at [18].
13 Criminal Procedure Act 2011, s 200(2)(a).
14 *Stuff Ltd v R* [2021] NZCA 86 at [25].

[38] Turning to the second stage of the inquiry, I acknowledge that there is a legitimate public interest in reporting, consistent with the principle of open justice. However, I am satisfied that I should exercise my discretion in favour of name suppression in this case.

[39] The interests of the children involved are a primary consideration. Although there is public interest in the death of a child, the public's understanding of the case would not be so greatly improved by learning your name or that of others involved. And there is no obvious ongoing risk posed by you to the public when your failure was to adequately care for a particularly vulnerable child rather than to care for children more generally.

[40] Accordingly, I make an order under s 200 of the Criminal Procedure Act 2011 forbidding publication of your name, address or occupation, and under s 202 an order forbidding publication of [D's] name.

End sentence

[41] [M], please stand.

[42] On the charge of manslaughter, you are sentenced to **12 months' home detention.**

[43] You will serve that sentence at your residence, subject to the standard conditions under s 80C of the Sentencing Act.
You may stand down.

Heine J

Solicitors:
Crown Solicitor, Wellington

Appendix: Sentencing indication

NOTE: PUBLICATION OF THE JUDGMENT OR OF THE REQUEST FOR A SENTENCING INDICATION IN ANY NEWS MEDIA OR ON THE INTERNET OR OTHER PUBLICLY ACCESSIBLE DATABASE IS PROHIBITED BY S 63 OF THE CRIMINAL PROCEDURE ACT 2011 UNTIL THE DEFENDANT HAS BEEN SENTENCED OR THE CHARGE DISMISSED. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3865734.html

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CRI-2025-085-1584

THE KING

v

[A]
[M]

Appearances: C T Hislop and L R van der Lem for Crown
S A Saunderson-Warner and K H Cook for Defendant

Sentence Indication: 7 July 2026

SENTENCING INDICATION OF HEINE J
[M]

---

[1] [M][15], you seek a sentence indication on a charge of manslaughter.[16]

[2] The sentence indication process permits me to indicate what certain aspects of your end sentence would be, should you decide to plead guilty. It is not a sentencing. It does not take into account all of the factors which would be taken into account at

---

15 All names have been anonymised with agreed alias.
16 Crimes Act 1961, ss 150A, 152, 160(2)(b) and 171; maximum penalty of life imprisonment.

sentencing, such as your personal circumstances. But it offers you a guide as to what certain aspects of that sentence will look like, if you accept it.

Summary of facts

[3] I begin by setting out the facts of the alleged offending. These are contained in an agreed summary of facts which are accepted for the purposes of today's hearing.

[4] You were the biological mother and primary caregiver of a six-year-old girl called [D]. She had complex medical needs which required extensive specialist support. She was born with spina bifida, which meant that fluid could not drain from her brain. She had a shunt installed to transfer any excess fluid from her brain to her stomach. From time to time throughout her life, this shunt became infected and had to be replaced. When that happened, she would suffer from prolonged febrile seizures.

[5] [D] regularly needed medical attention. When she did, the medical practitioners she saw told you to seek urgent medical attention for any headaches, fevers, changes in vision, vomiting, weakness in limbs or seizures. These were a sign that the shunt might be failing and demanded prompt medical attention within hours.

[6] On 26 August 2023, you agreed that [D] would travel to her aunt's house and stay for a few nights. You remained in [Redacted]. Your sister's house was very close to [Redacted] Hospital.

[7] The next day, [D] began suffering from headaches and vomiting. During this time, you and your sister A exchanged a number of text messages about [D]. I won't set these out in a lot of detail but in short:

(a) On 27 August 2023, A told you that your daughter had a headache and was vomiting. She explained that she couldn't take her to the hospital.

(b) On 28 August 2023, A told you that [D] really needed to go to hospital and was getting more headaches. You asked A to take [D] to the hospital. She told you that you needed to sort it out. You said you would pick [D] up the next day.

(c) On 29 August 2023, you told your sister that your car was getting fixed but would be in to pick your daughter up and take her to the hospital. A repeated that she was really worried and you would need to take [D] to the hospital. Your text said "I just need time to sort out my head cause its shit".

(d) You later told A that the car wouldn't be ready until tomorrow. You messaged "I feel so suicidal". A told you that while [D] had had a headache and had been sick, she would probably be alright until the next day when the car was ready.

[8] On the morning of 30 August 2023, [D] was found unconscious. Paramedics tried to revive her, but she died. The expert evidence shows that this likely resulted from a febrile seizure or brain swelling. The experts have said that if she had received prompt medical intervention it is "highly unlikely" she would have died.

[9] You have acknowledged that you knew the signs and symptoms of a shunt failing and the requirement to get medical attention. You have accepted that you knew that [D] was not okay. But the week before her death, you were struggling and could not even look after yourself. You have said that you had no money, no car and no way to get to [Redacted].

Approach to sentence indication

[10] In providing a sentence indication I must take into account the sentencing principles of the Sentencing Act 2002. I must indicate a sentence that is broadly consistent with what other people have received for similar offending.

[11] The first thing I need to do is set a starting point. That means I need to consider what sort of sentence you should receive based on the seriousness of the offending itself. That can then be adjusted upwards or downwards based on things personal to you.

[12] At this stage, the only personal factors I am going to take into account are your very limited previous offending, the material in your mental health in a report by

Dr Justin Barry-Walsh, and any guilty plea discount, because I have the necessary information in front of me for that. As I will explain later, you are likely to be entitled to a significant range of other personal discounts if you decide to plead guilty and we proceed to a sentencing proper.

Starting point

[13] I now take the step of considering what starting point I should adopt.

[14] The law recognises that all manslaughter cases are different and the facts of each case play an important role in deciding the appropriate sentence. There is no guideline judgment for this type of offending. But there is a case called *Taylor*, which helpfully summarised the factors that are relevant when considering the seriousness of offending like this.[17] Four of those factors apply here.

[15] The first is your daughter's vulnerability. As a six-year-old with complex medical and disability care needs, she was highly vulnerable and you knew this as her mother. She was depending on you.

[16] The second is breach of trust. There is no suggestion that [D] was abused in any way. This is not a case of intentional mistreatment. I have read your evidential interview and it is clear to me that you loved her very much and was skilled in looking after her. But it was up to you as her mother to make sure that she was okay. I accept that you were one step removed at the time, but you were still her mum and knew best how to manage her health.

[17] The third is serious long-term harm, which is self-evident in this case.

[18] The next is the extent of what occurred. [D] deteriorated over a period of three days. You knew from your years of experience looking after her that headaches and vomiting meant she needed to see a doctor, and within hours. Your sister told you more than once that she thought [D] needed to go to hospital. You had conscious knowledge of the risks to her for a period of days and did nothing about it. I accept

---

17 *Taylor v R* [2017] NZCA 574.

that you had car troubles, but [A's] address was very close to the hospital. All you needed to do was call 111.

[19] Both the Crown and Ms Saunderson-Warner have helpfully referred me to a wide range of cases to compare your offending with. The cases range from those involving accidental omissions on the part of parents to those involving sustained failure to care for vulnerable adults. Your offending was obviously much less serious than some offered by the Crown, which as your lawyer quite rightly points out involve prolonged abuse.[18] But it was more serious than some of the other cases, which feature accidents or momentary inattention.[19] Ultimately, I agree with the Crown and your lawyer that your offending fits somewhere in the middle.

[20] The Crown says the appropriate starting point is at least four and a half or five years; Ms Saunderson-Warner says that a starting point of three and a half to four years is more appropriate. I have decided that the appropriate starting point based on your conduct alone is four years and nine months. Any less would not be sufficient to recognise your period of inaction. This is not a case where you were momentarily distracted for 15 minutes.[20] You did not act to protect [D], knowing you should, for several days.

[21] Ms Saunderson-Warner has told me that I should reduce the starting point to take account of the fact that, at the time, you were a mum who wasn't coping. She says that your financial position, including transport difficulties, impacted on your ability to provide adequate care for [D]. I do not quite accept that because, as I have said, all you needed to do was to call an ambulance.

[22] But I also have your texts during the days leading up to [D's] death, in which you describe yourself as "suicidal" and not having a straight head. A report has also been prepared on your behalf by Dr Barry-Walsh, who is an expert psychiatrist. He says that at the time of the alleged offending, you were suffering from a depressive

---

18 *R v Otuszewski* [2019] NZHC 1895; *R v Kuka* [2009] NZCA 572; and *R v Li* [2021] NZHC 3354.

19 For example, *R v X* [2015] NZCA 1244.

20 For example, *E (CA689/2010) v R* [2010] NZCA 13; and the hypothetical scenario in *R v Kinraid* [2017] NZHC 233 at [22] where "a tired and overwrought mother… leaves her child briefly by himself in the bath while she attends to another child…" which would attract a starting point of 2.5 to 4.5 years' imprisonment.

illness which impacted on your judgment, and likely affected your ability to respond to circumstances like [D's] health difficulties.

[23] Mental health issues are generally taken into account at the second stage of the sentencing process, as a mitigating factor relevant to an offender's personal circumstances. But in rare circumstances, they may affect the starting point as well. This will only be the case if the issues alter the character and gravity of the offending itself.[21]

[24] Generally, people commit crimes by actively doing things that are wrong, by committing an "unlawful act". But your crime was to *not* do something you were supposed to, by failing to perform your duty as [D's] parent. Depression directly affects a person's ability to do the things they should do, or would otherwise want to. I can see a clear link between your depressive illness and your failure to take action in late August 2023.

[25] For that reason, I think that I can, and I should, reduce your starting point to take that into account. I am only going to adjust it slightly, by six months, because your health did not excuse you from taking care of [D]. But it provides context for why you did not, which makes your conduct slightly less blameworthy.

[26] On that basis, if you accept this indication and plead guilty, I will adopt a starting point of four years and three months' imprisonment at sentencing.

Personal factors

[27] Once the starting point is set, an adjustment is made for factors personal to you. Your criminal history is minimal, and I make no adjustment for that.

[28] If you accept this sentence indication and plead guilty, you will be entitled to a discount of 25 per cent. That is the maximum possible. While you were first charged some time ago, amendments have been made to the summary of facts on which this sentencing indication is given.

---

[21] *Orchard v R* [2019] NZCA 529 at [45].

[29] The Crown accepts in its submissions that you are likely to be able to justify additional discounts for factors such as remorse, rehabilitative prospects, the influence of your mental health challenges, your upbringing and/or addiction issues. If I was to sentence you, I would need to see the evidence and reports which relates to those matters. But I think it is safe for you to assume that if you pleaded guilty you would be entitled to additional discounts. They may be substantial. This may or may not mean a sentence other than imprisonment, such as home detention, will be possible, but I cannot promise that at this stage.

Sentence indication

[30] [M], I have now reached the end of this process and will repeat what I have decided. If you accept this sentence indication and plead guilty to the charge of manslaughter, you will receive:

(a) a starting point of four years and three months' imprisonment, and

(b) a 25 per cent discount for your guilty plea, bringing the sentence down to three years and two months' imprisonment.

[31] You may also receive further discounts at sentencing depending on any reports or further material about your personal circumstances.

[32] This sentencing indication remains open to you until **5.00 pm on Thursday 23 July 2026**.

Heine J

Solicitors:
Crown Solicitor, Wellington