ORDER PROHIBITING PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF DEFENDANTS PURSUANT TO S 200 OF THE CRIMINAL PROCEDURE ACT 2011. SEE PARAGRAPH [29].
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 3426

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
[A]

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[1] [A], 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 imprisonment for your charge and apply a 25 per cent reduction for your guilty plea. That brought your sentence down to three years. I indicated that you

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

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. I have now received some reports about your personal factors which I will discuss in more detail. I now need to consider what is an appropriate sentence for you taking account of those factors.

Indication

Facts and starting point

[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 them.

[5] In short, however, in August 2023 your niece [D] died at the age of six. She had complex medical needs and at the time she was in your care. Over a period of three days, you noticed symptoms you found concerning. You texted your sister, the child's mother, about those symptoms and asked her to come and take her to the hospital. However, you did not take her yourself. 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.

[6] In my indication, I noted that the relevant factors when assessing your culpability were that serious long-term harm had occurred, that [D] was highly vulnerable, that you had breached her trust, and that you had not acted over a period of three days.[2] However, I noted that you were having to care for other family members at the time. Based on those factors, the cases I referred to and the starting point of four years and three months' imprisonment I adopted for [M], I decided that the appropriate starting point for your conduct was four years' imprisonment.

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

Guilty plea

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

Other personal factors

[8] I now turn to consider your other personal factors. This material comes from a psychological report, a Provision of Advice to Courts report (what we call a PAC report), and your affidavit addressed to this Court.

[9] You have a prior conviction, this is for unlawful taking/conversion. It is not relevant because it was over 15 years ago and does not suggest any risk of reoffending on your part. Indeed, your risk of reoffending has been assessed as low. What happened here was an isolated event.

[10] The reports and other materials I have received, including your affidavit, suggest a range of mitigating factors.

[11] The first and most significant in your case is the impact imprisonment would have on your children. You have three children living with you, aged two, 15, and 18. Their fathers do not live with you, so you are their primary caregiver. Your two year old is special needs and requires a lot of significant additional support. The evidence before me is that your 15 year old has significant mental health challenges and has attempted suicide on several occasions, most recently in July this year. Because of these difficulties you are now homeschooling that child. In these circumstances it is clear that your absence from your children's lives would have a significant impact on them.[3] I make an allowance of 15 per cent for that.

[12] In terms of remorse, you have expressed regret as to how your actions contributed to [D's] death. You report feelings of guilt and grief, although no concrete steps have been taken by way of making amends, should that even be possible. And you are of good character to the extent that, as I have said, you have no relevant prior

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[3] See discussion in *Philip v R* [2022] NZSC 149.

offending. I regard remorse and good character as relatively modest here at five per cent across both categories together.

[13] The final factor is your upbringing. There is a connection between this and your offending here. You are the eldest of many siblings and parented them from around the age of 10. You left school at 15 and became pregnant. So, you have been in a parenting role from a very young age.

[14] One of the reports I have received talks about the culmination of years of being responsible for the care of others. In the report writer's view, you understood that [D] needed medical intervention but the cumulative effects of parental and carer fatigue, including feeling responsible for everyone else's needs within your whanau, tends to create difficulty making decisions and impairment in your capacity to process information without becoming overwhelmed. In the report writer's view, that would have resulted in you placing the responsibility for this decision primarily on [D's] mother. The report writer says that your limited educational background and difficulty in understanding [D's] medical needs likely contributed to your lack of assertiveness with your sister. There is also some suggestion that you have suffered from anxiety for a long time, which also may have played a role.

[15] I make an allowance of 10 per cent for this factor.

[16] That produces reductions for mitigating factors of 30 per cent which, combined with the reduction for a guilty plea, provides a total reduction of 55 per cent.

Nominal end sentence

[17] This results in a nominal end sentence of **one year and nine months' imprisonment.**

Home detention

Is home detention appropriate?

[18] 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 an address in Wellington for this purpose where you live with your children. This 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. You have also been made aware and understand the conditions that will apply during home detention and have agreed to comply with them.

[19] 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 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.

[20] The Crown does not oppose you being sentenced to home detention. I am satisfied that a sentence of home detention is the most appropriate outcome for you.

[21] The principal reason why I consider home detention to be more appropriate than a short-term sentence of imprisonment is that society's interests are better served if you remain with your children, given the circumstances I have outlined. Imprisonment risks simply transferring trauma to a new generation.

[22] It is worth repeating that this was serious offending. However, it was very context specific and you are at low risk of offending again. In your case, some of the purposes of sentencing are to hold you to account for the death of a little girl, to denounce what occurred, and to provide in some way for [D's] interests. Those purposes cannot be achieved by a less restrictive sentence than home detention.

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4 Sentencing Act 2002, ss 15A and 80A.
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].

What conditions are appropriate?

[23] 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 to attend assessments, counselling, treatment or programmes as directed by and to the satisfaction of a probation officer.

[24] I may only impose special conditions of home detention if I am satisfied that there is a significant risk of you committing further offending, 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]

[25] 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. Some of them are covered by the standard conditions in any event.

What term of home detention is appropriate?

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

[27] I have concluded that a period of home detention of 10 months is appropriate. This is slightly less than half. The reason for that is because, as I indicated in the July sentencing indication, your culpability is slightly less than your sister's and this needs to be recognised in the end sentence.

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10 Sentencing Act, s 80D(2).
11 Section 80A(3).
12 *Bisschop*, above n 6, at [18].

Name suppression

[28] I now turn to consider name suppression. You have also applied for suppression of your name on the grounds that publication will be likely to cause you extreme hardship and your children undue hardship. Extreme hardship is a high threshold. It requires something more than the ordinary hardship which applies to anyone who is convicted of a criminal offence. I am not satisfied on the basis of the materials in front of me that that is the case here. I am satisfied on the material in front of me, however, that publication would likely cause undue hardship to your 13 year old child in particular.

[29] However, as the Crown submits, given that I have granted name suppression in relation to [M], it follows that suppression of your name would be required under s 200(2)(f) of the Criminal Procedure Act 2011 to avoid jeopardising the suppression order made in favour of [M].

[30] I make an order forbidding publication of your name, address or occupation under s 200 of the Criminal Procedure Act 2011.

End sentence

[31] [A], please stand.

[32] On the charge of manslaughter, you are sentenced to **10 months' home detention**. You will serve that sentence at [Redacted] subject to the standard conditions under s 80C of the Sentencing Act.

[33] You may stand down.

Heine J

Solicitors:
Crown Solicitor, Wellington for Crown

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
P H Mitchell for Defendant

Sentence Indication: 7 July 2026

SENTENCING INDICATION OF HEINE J
[A]

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[1] [A],[13] you seek a sentence indication on a charge of manslaughter.[14]

[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

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13 All names have been anonymised with agreed alias.
14 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 is accepted for the purposes of today's hearing.

[4] You are the sister of the [M] and therefore the aunt of her daughter, who died on 30 August 2023 at the age of six. Your niece had complex medical needs which required extensive specialist support. She was born with spina bifida which meant that her 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 this became infected and had to be replaced, and when that happened, she would suffer from prolonged febrile seizures.

[5] On Saturday 26 August 2023 you agreed that your sister could bring [D] to your house in [Redacted], where she would stay for several nights. This address is a three minute drive or 11 minute walk to [Redacted] Hospital's Emergency Department. Your sister remained in [Redacted] during this time.

[6] On 27 August 2023, [D] began experiencing headaches and vomiting. Over the next three days you exchanged texts with [M] regarding her condition and care.

[7] I am not going to set these out word for word but in broad terms:

(a) On the 27th, you told your sister that her daughter had been having a headache and was throwing up and that she might need to go to hospital. You explained that you couldn't take her because your own mother was sick in hospital and you had to look after your grandad.

(b) You messaged [M] again on the 28th that [D] really needed to go to hospital because she was getting more headaches. [M] asked you to take her. You pushed back and asked [M] to sort her daughter out. [M] said that she would be there the next day.

(c) On the 29th, [M] told you she was getting her car fixed and then she would come to pick up her daughter. You said that you were getting really worried. Later that day, [M] told you the car wouldn't be ready until tomorrow and asked if [D] would be okay until the following day? You said she was okay for now because her last headache was at lunchtime and she had vomited. You thought she would be okay until the morning.

[8] On the morning of 30 August 2023, [D] was found unconscious. Paramedics tried to revive her, but she died that morning. 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 likely" she would not have died.

[9] You have said you did not know the signs or symptoms to be aware of other than the seizures, and that you exaggerated the symptoms when messaging [M]. You have said that you thought about taking [D] to the hospital but didn't because you would not know what to say to the doctors.

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 limited prior offending and any guilty plea discount. As I will explain later, you are likely to be entitled to a significant range of 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.[15] You will have just heard me tell [M] that four of those factors apply to her offending. I think all four of those factors apply to you as well, albeit in slightly different ways.

[15] One of those factors is the same — serious long-term harm occurred to [D], which resulted in her death.

[16] The extent of [D's] vulnerability was also the same. As a six-year-old with complex medical and disability care needs, she was highly vulnerable. Although you were not her mother, she died while she was in your care.

[17] The third is breach of trust. As I said to [M], there is no suggestion that [D] was abused in any way, and this is not a case of intentional mistreatment. But she was in your care for several days.

[18] Aside from [D] physically being in your care, the biggest distinction between your position and [M] is the extent to which you knew about [D's] health issues. This is the central focus of your lawyer's submissions. He argues, on your behalf, that you had been asked to look after the child for four days, whereas [M] had provided care to her, as her mother, for the previous six years. He says that your previous interaction with and care of [D] had only been occasional, and that while you knew about the risk of seizures, there is no evidence that you knew what headaches or vomiting could indicate.

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

[19] I have read your police interview transcript, and I accept that you appeared to know less about [D's] condition than her mother did. You claimed to be "getting kind of paranoid" about the headaches because you did not know what they meant, and that [D] "seemed fine" when you had last seen her. There is no evidence that you knew the seriousness of her symptoms, or as Mr Mitchell puts it, that you knew she was "in grave life-threatening danger".

[20] I also accept that you were needing to care for other people in your whanau at the time. The summary of facts records that you messaged [M] on 27 August saying you couldn't take [D] to hospital "because mum is at the hospital she's sick as and I have grandad." Your police interview transcript records that your mother had infected eczema, and that you also had to care for your own children and your koro. There would have been a lot to deal with.

[21] But I must balance that against a final factor, which is the temporal extent of what occurred. [D] deteriorated over a period of three days. You may not have known that headaches and vomiting meant she needed to see a doctor within hours. But you thought that something might be wrong, and you told your sister more than once that you thought [D] needed to go to hospital. You had conscious knowledge that a child with serious health issues had symptoms you found concerning and did nothing about it. I accept that you were looking after other whanau members, and that you repeatedly asked your sister to take [D] to hospital. But your address was heartbreakingly close to it. All you needed to do was call 111.

[22] Both the Crown and Mr Mitchell 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 actual violence or neglect.[16] But many of the cases provided by your lawyer are quite old and they do not clearly articulate the starting points chosen.[17]

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

17 For example, *R v Nagle* [2013] NZHC 2532; *R v Samita* HC Auckland CRI-2007-044-3542, 8 October 2010; *R v Laufau* HC Auckland T000759, 2 October 2000; and *R v Vaughan* HC Auckland T121/98, 12 March 1999.

[23] Your lawyer says the appropriate starting point is around two and a half years. The Crown says the appropriate starting point is around four to four and a half years. I have decided that the appropriate starting point is four years. This is for two reasons.

[24] First, cases where a child dies due to a mother's 15 minutes of inattention in an obviously dangerous situation, such as a bath, have had a starting point of two and a half to four and a half years' imprisonment.[18] Your conduct bears some similarity to this situation — you were distracted, and you did not act while a child was in danger. But while [D] was in less obvious proximate harm than a child in a bathtub, the amount of time you went without getting her care was much longer than 15 minutes. It was several days. A starting point at the top of this range is appropriate.

[25] Secondly, I have indicated that the appropriate starting point for [M] is four years and three months' imprisonment. I consider that your culpability is slightly lower than hers, and it is therefore appropriate for your starting point to be as well.

[26] On that basis, if you accept this indication and plead guilty, I will adopt a starting point of four years' 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] In the event that you accept the sentencing indication and plead guilty you will also be entitled to a discount of 25 per cent. Amendments have been made to the summary of facts on which this sentencing indication is sought.

[29] The Crown accepts in its submissions that you are likely to be able to justify additional discounts for factors such as remorse and rehabilitative prospects. If I was to sentence you, I would need to see the evidence and reports which relate to those matters. But I think it is safe for you to assume that if you pleaded guilty you would

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[18] 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.

be entitled to additional discounts. They may be substantial. They may mean that a sentence other than imprisonment will be possible, but I cannot promise that at this stage.

[30] I have the benefit of, and have read the support letter from He Herenga Kura, and the letter that you have sent me expressing your remorse and sadness about what has occurred. They are also matters I would take into account in the event that you were to plead guilty and be sentenced.

Sentence indication

[31] [A], 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

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

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

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

Heine J

Solicitors:
Crown Solicitor, Wellington