NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS, OF DEFENDANT PROHIBITED BY ORDER MADE UNDER S 200 OF THE CRIMINAL PROCEDURE ACT 2011.

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS, OF DEFENDANT'S HUSBAND OR CHILD PROHIBITED BY ORDER MADE UNDER S 202 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE HIGH COURT OF NEW ZEALAND
WANGANUI REGISTRY

CRI 2015-083-529
[2015] NZHC 1244

THE QUEEN

v

X

Hearing: 5 June 2015

Counsel: L C Rowe for Crown
D Goodlet for Defendant

Ruling: 5 June 2015

RULING (1) OF SIMON FRANCE J
(Application for discharge without conviction)

---

[1] The defendant applies for a discharge without conviction having pleaded guilty to a charge of manslaughter. The deceased is the defendant's only child, a young boy aged 16 months at the time of his death.

[2] The law provides that a discharge without conviction may be granted whenever the consequences of a conviction would be out of all proportion to the gravity of the offence. Gravity of the offence is a concept that requires analysis of both the circumstances of the offending, and of the offender.[1]

[3] For reasons that can be briefly stated, a discharge without conviction is the appropriate outcome in this case and will be ordered. I have already made final suppression orders in relation to the identity of the defendant, her husband, and the child.[2] I also record that I have concluded it is preferable to deliver a less complete ruling that is able to be published, rather than provide fuller detail which would inevitably require suppression. This ruling therefore reflects a balance between the suppression orders, and meeting the obvious public interest in the matter.[3]

[4] The defendant is a health professional who undertakes challenging work. The work is of the type that will often occupy your thoughts even though you have ostensibly left work for the day. Such was the case on this occasion. The defendant had been working long hours for many consecutive days. On the morning of her son's death she left for work at 7.00 am, having only returned home the previous night at half past midnight.

[5] It was a Friday morning and she put her son in the car to drop him off at day care. He was in his approved car seat, facing towards the back of the car.

[6] Tired, distracted by work, and somewhat on auto-pilot as she describes it, the defendant forgot to turn off at the crèche which is very near her work. Instead she drove straight to work, where she parked the car. Oblivious to the fact her son was still in the car, she went inside and started working.

---

1 Sentencing Act 2002, ss 106 and 107. The relevant authorities are *Z v R* [2012] NZCA 599 and *D C v R* [2013] NZCA 255.

2 Criminal Procedure Act 2011, ss 200 and 202.

3 For the avoidance of doubt, this ruling and the information contained within it are able to be published.

[7] It was several hours later when the defendant noticed she had a text from the day care centre, asking if the young boy was okay or sick. In two reply texts, the mother said that he was fine in the morning, and querying if something was wrong. The crèche then rang her, and again the mother asked if something was wrong. The crèche worker then told her that she hadn't dropped her son off that morning, at which point realisation dawned. The defendant dropped the phone and ran to her car, but efforts to revive the young boy were unsuccessful. The official cause of death is heatstroke and dehydration.

[8] Looking first at the circumstances surrounding this death, and reflecting on comparable cases involving the death of young ones, in my view the defendant's culpability lies towards the lower end.[4] Usually in these cases there is an initial appreciation of risk, such as awareness that the child is near water or is unsupervised. That is not so here where the basic context of the child being driven to crèche is not one of danger. Instead, there is this intervening act, namely this extraordinary blanking of the mind. As is evidenced by the defendant's later exchanges with the crèche, she simply lost all present consciousness that her son was in the car. She believed she had dropped him at the crèche. This aberrant mental state was no doubt in part of a product of her extreme tiredness. As regards that, it is fair to note that the tiredness stemmed from selflessness and commitment to the community, rather than from any personal activity.

[9] There have been other cases involving the death of young children where a discharge without conviction has been assessed to be the correct outcome.[5] (Some are noted below.) In my view, for the reasons just outlined, the culpability of the present defendant is less than in those cases.

[10] Turning to the defendant herself, she immediately made a statement as to what had happened and pleaded guilty as soon as she was charged. She and her husband have suffered a terrible loss that will never pass. Hers has to date been an

---

4 The Crown accepted this by reference to the different levels of culpability identified in *R v Hamer* [2005] 2 NZLR 81 at [43]. It is accepted that the present case falls into the lowest category, namely inadvertence.

5 *R v Nagle* [2013] NZHC 2352; *R v Illston* HC Wanganui CRI-2011-034-273, 16 November 2011.

exemplary life and her referees from varied walks of life all testify to her exceptional character and her contribution to society. For reasons of anonymity and to facilitate its continuing to happen, there are aspects of that contribution which cannot be further referred to, but it is relevant to acknowledge that the defendant is someone who even at a relatively young age has made a contribution that merits particular recognition. Finally, I note those, besides her, who are most affected by this tragedy are supportive and forgiving. A restorative justice meeting was facilitated and the report makes plain the defendant's complete acceptance of her role, her total remorse and the tremendous level of support that is available to her.

[11] Adding these two features together, namely culpability at the lower end and a defendant who, along with her husband, has suffered the most as a consequence of what happened, a defendant who has otherwise been of exemplary character and a defendant who has already contributed significantly to society and, if able, will no doubt continue to do so, I am of the view that I do not need to go further in order to reach a decision on the application. The stigma of a conviction for manslaughter of anyone, let alone of one's child, should not be underestimated. It is a heavy burden which often, but not always, is the necessary response. I have no doubt the circumstances of the present case which I have already outlined allow for a more compassionate response.

[12] This conclusion does not mean I do not recognise the Court's important role in protecting the young and vulnerable, and in reminding those who have care of children that they must be careful and take reasonable precautions. But entering a conviction on this defendant would not meaningfully advance that message.

[13] The Crown's position today has been to recognise that a discharge without conviction was an available outcome on the facts, and based on the information filed for the hearing, does not oppose the application. In fairness to that concession, I note that the Crown has also had regard to the many other potential impacts of a conviction that are established by the available evidence. I have reached my decision without needing to address these, but they equally make it plain that the consequences of a entering a conviction would be out of all proportion to the gravity

of the offence. To frame the test in a way suggested by a leading English jurist, a conviction here would undoubtedly do more harm than good.[6]

[14] Before concluding I note for the record that whether or not a conviction is entered does not affect the ability of the relevant professional body to investigate the situation if it chooses. This removes any public concern that a discharge would prevent any professional intervention that is needed. Indeed the Medical Council has been fully appraised from the outset, has already assessed the defendant's on-going capacity to continue to work, and is satisfied in that regard. I am advised it will continue to monitor the situation.

[15] The application is granted, and the defendant is discharged without conviction and is free to go.

Simon France J

Solicitors:
Armstrong Barton, Crown Solicitors, Wanganui
D Goodlet, Barrister & Solicitor, Wanganui

[6] Lord Hoffman in *Sepet v Secretary of State for the Home Department* [2003] UKHL 15 at [34].