**IN THE HIGH COURT OF NEW ZEALAND**
**ROTORUA REGISTRY**

**CRI-2015-069-001162**
**[2016] NZHC 1414**

**THE QUEEN**

v

**TANIA SHAILER**
**DAVID WILLIAM HAEREWA**

Hearing: 27 June 2016

Counsel: A J Gordon and C H Macklin for Crown
R M Mansfield and S Lack for Shailer
H Edward and T Braithwaite for Haerewa

Sentencing: 27 June 2016

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**SENTENCING NOTES OF KATZ J**

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Solicitors: Gordon Pilditch, Crown Solicitor, Rotorua

Counsel: R Mansfield, Barrister, Auckland
H Edward, Barrister, Rotorua

## Introduction

[1] Ms Shailer and Mr Haerewa, you appear before me today to be sentenced for the manslaughter[1] and ill treatment[2] of Moko Rangitoheriri. Moko was in your care from 12 June 2015 until his death on 10 August 2015. The maximum penalty for manslaughter is life imprisonment. The maximum penalty for ill treatment of a child is 10 years' imprisonment.

## The offending

[2] Three year old Moko and his seven year old sister were left in your care by their mother on 12 June 2015. She was unable to care for them at the time, as she was with her eldest child at Starship Hospital in Auckland. You agreed to help out, initially for a couple of weeks. You have four children of your own, aged between two and seven years.

[3] Two months after Moko was entrusted to your care, at 3:00 pm on 10 August 2015, Ms Shailer dialled '111' and requested an ambulance. You told the operator that Moko had fallen from a wood pile the previous day, that he had sustained severe bruising, but that he had been fine earlier in the day. You said that Moko was now really cold, unconscious, not breathing properly and that his stomach was really hard.

[4] The visual injuries and condition of Moko were such that the ambulance officers rushed him straight to the emergency department at Taupo Hospital, where he was taken immediately to the resuscitation room. He had extensive facial injuries and swelling. Both of his eyes were swollen to such an extent that staff were not able to open his eyelids to check his pupils. His abdomen was extremely distended. He had bruising on the front and back of his body, abrasions and what appeared to be bite marks to his face and arms. Staff were initially unable to obtain a body temperature, because he was too cold for any of their measurement devices.

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1 Crimes Act 1961, ss 66(1), 160(2)(a), 171 and 177.
2 Section 195.

[5] Due to the severity of Moko's condition the Taupo medical team made immediate contact with Starship Hospital and a helicopter and staff were dispatched urgently from Auckland to transfer Moko to Starship. Tragically, however, despite their best efforts, the medical staff were unable to revive Moko. At 10:00 pm he was pronounced dead.

[6] A post mortem examination was carried out. The pathologist determined that the direct cause of Moko's death was multiple blunt force injuries. The lethal injuries that caused Moko's death were lacerations and haemorrhages deep within his abdomen, together with older bruising and damage to his bowel, the combination of which had caused his bowel to rupture. The leaking of faecal matter into Moko's abdomen had caused peritonitis and septic shock.

[7] Moko had moderate brain oedema (swelling of the brain). In addition, he had significant clots and haemorrhages on his brain, representing multiple injuries inflicted over a time span of days. The pathologist concluded that there was more than one cause of death. The swelling to Moko's brain and the septic shock from the ruptured bowel were both deadly. The brain swelling could have been caused by the head injuries, the septic shock and abdominal injuries or a combination of the two. In addition, the pathologist's view was that a further possible cause of the brain swelling and therefore Moko's death was smothering, as there were mouth and face injuries consistent with smothering. The pathologist observed, however, that:

> while the mechanism of death here is complex, one fact is simple: with prompt medical attention to the signs of physical illness or mental deterioration, such as abdominal pain, nausea, vomiting, diarrhoea, loss of bowel control, fever, lethargy, or fainting, both the brain swelling and the sepsis could have been either completely prevented or reversed and Moko could still be alive today.

[8] In addition to the injuries that contributed to Moko's death, he also had multiple blunt force injuries of various ages all over his body. These included facial and neck bruises and abrasions, lacerations and abrasions to his chin, neck, ears, and mouth, haemorrhages to both eyes, bruises on multiple ribs and elsewhere on his chest and abdomen, bruising to his right testis, injuries consistent with human bite marks on his cheeks, arms and right shoulder and further abrasions and bruising, some of which were also suggestive of human bite marks. A forensic dentist

concluded that all of the human bite marks were inflicted by somebody older than 12 years of age.

[9] Despite initially denying that you had caused Moko's injuries and advancing entirely implausible explanations as to how they occurred, you have both now admitted to extensive assaults on Moko, as set out in the agreed summary of facts. In particular, over the two months that Moko was residing with you, your animosity towards him increased. The reasons for your hostility are not clear, although Mr Haerewa told police that he "didn't like his ways" and that he "was angry at him for taking us for granted." I note, again, that Moko was three years old.

[10] Both of you began to assault Moko. The degree and severity of the assaults escalated, with each of you encouraging and supporting the other in their behaviour. A culture of violence against Moko evolved. Ms Shailer was observed by children in the house to punch, kick and slap Moko. She was also observed by one of the children to bite Moko multiple times to his arms and face, with the degree of force being so hard that it caused Moko's skin to come off and his face to start bleeding.

[11] Mr Haerewa, you admitted to police that you physically assaulted Moko continuously, especially over the four days prior to his death. You also admitted that you started getting into a routine of picking on Moko, that you did not want Moko around you, that you did not like Moko in your presence and that you would constantly have him in time out, often sitting in the bathroom for extended periods of time, sometimes hours, on his own. In particular, you admitted to:

(a) slapping Moko to his face and body with your hand and with a jandal;

(b) kicking him to the side of his body and his legs;

(c) grabbing him by the arms and throwing him onto his bed (which was a mattress on the floor);

(d) slapping him on the face and cutting his lip;

(e) kicking him;

(f) throwing him with force onto his bed and then stomping on him on his back;

(g) throwing him on the floor and kicking him in the back;

(h) rubbing faeces in his face after he had soiled himself;

(i) scrubbing his body so hard in the shower that you removed scabs;

(j) picking Moko up in the bathroom, after he had collapsed, and letting him drop face first onto the ground, three to four times;

(k) placing your hand over Moko's mouth to stop him screaming out in pain.

[12] The main event that caused Moko's death was inflicted by Ms Shailer, who stomped on his stomach with significant force. Two of the child witnesses who saw the stomping described it as "really really hard" and that Moko was groaning and expelling bursts of air. It is not exactly clear when this incident occurred, but it was probably on Wednesday 6 August 2015, as by the next day Moko was soiling himself uncontrollably and Mr Haerewa told police that he was getting Moko to sit on paper and plastic because of this.

[13] One of the child witnesses also describes Ms Shailer placing her hand over Moko's mouth in what the witness described as a "choking thing" which caused Moko to kick and thrash his legs. It is unclear when in time in relation to the other offending this occurred, but I note the pathologist's evidence of physical injuries that were consistent with smothering.

[14] It is unclear which of you was responsible for the head injuries that contributed to Moko's death. It is also unclear which one of you two caused many of the other injuries that Moko suffered, apart from those that Mr Haerewa admitted to the police, or that the children observed to have been inflicted by Ms Shailer.

[15] It is agreed that Mr Haerewa encouraged and abetted the stomping by Ms Shailer on Moko's abdomen, by assaulting Moko in the various ways I have described and in that way encouraging and supporting the culture of violence that occurred within this home. Given the visible nature of a number of Moko's injuries both of you must have been clearly aware of the violence that the other was inflicting on Moko.

[16] By Thursday 6 August 2015 both of you were aware that Moko was ill, and over the next few days he became increasingly unwell. He was unable to control his bowels and was soiling himself frequently. By Sunday Moko could barely walk, his face was swelling significantly, to the point where he could barely open his eyes, and bruising to his face developed, consistent with his head injury. He kept falling to the ground. He was soiling himself frequently and vomiting. Both of you were home, together, on that day. You kept Moko in his room for the entire day. He repeatedly asked for water. Mr Haerewa gave him some water the first time he asked, but then refused him any more water.

[17] Mr Haerewa continued to assault Moko on the Sunday, despite how gravely ill he was. In particular, you kicked Moko in the lower back, after he had soiled himself, then wiped the faeces on his face. You then placed Moko in the shower to clean him up. You washed him with such force that you removed scabs from his body. Moko was screaming in pain and you covered his mouth to silence him. While in the shower Moko fell, as he was barely able to stand up. You"flipped" him over onto his back, and observed him lying in the shower. You noted that he appeared to be getting worse. Rather than seek help, however, you dried him off, put him in a nappy and "chucked" him back into his bedroom.

[18] Neither of you sought medical attention for Moko as his condition deteriorated. By Monday morning he was unable to communicate and could barely move. When he was forced to move he kept dropping to the ground. His breathing was laboured and his stomach started to get hard. You were both at home with him on that morning but did nothing to get him any assistance, despite the fact that it was clear to you that he was very gravely ill.

[19] Ms Shailer, at midday you went to your course and acted as if everything was fine. On the way home, at approximately 2:20 pm, you stopped at a pharmacy and tried to purchase an EpiPen Jr, a medical device that injects a measured dose of adrenaline into a person. This demonstrates that you were very well aware of how ill Moko was by then, and presumably hoped that the EpiPen might revive him. The pharmacy did not have one so you went home. Upon returning home, both of you tried to revive Moko, who was by then unresponsive. Ms Shailer performed mouth to mouth. Mr Haerewa then left to pick up the other children from school, and at 3:00 pm, Ms Shailer dialled 111.

[20] Mr Haerewa, when you were spoken to by police, you admitted that you had physically assaulted Moko continuously, especially over the four day period prior to his death. I have already outlined the detail of those assaults. You also admitted that you had "killed Moko", by knowing how unwell he was and failing to get him any medical assistance. You stated that you saw the signs that Moko was sore but did not do anything about it. You acknowledged that Moko had a swollen and bruised face and that "it didn't look right". You also admitted that Moko would tell you he was sore but somewhat incomprehensibly, you said that you thought Moko was simply trying to make you feel sorry for him.

[21] Ms Shailer, when initially spoken to by the police you lied, telling them that Moko's injuries were either accidental, for example because he fell from the woodpile, or that they were a result of him doing things to hurt himself, such as running into walls head first. When spoken to further, you minimised your offending, only admitting to kicking Moko on the bottom on three occasions, once very forcefully. You also admitted biting him once on the arm, to discipline him for biting one of your children on the arm. You said that you knew you should have taken Moko to the hospital after he fell from the woodpile but claimed, entirely implausibly, that you did not take him to hospital because Moko pleaded with you not to take him. The truth, of course, was that you did not want your abuse of Moko to be discovered.

**Setting the starting point**

[22] The first stage in the sentencing process is to set a starting point, based on the overall seriousness of your offending. The manslaughter charges are the lead offending. I will, however, consider a global starting point for both the manslaughter and ill treatment of a child offending. It is artificial to separate the two given that both charges arise from a continuing course of violence and neglect.

[23] The Sentencing Act 2002 provides that the Court:[3]

> …must impose the maximum penalty prescribed for the offence if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate.

I must therefore determine whether, taking into account all the circumstances of your offending, this is a case which falls into the category of the "most serious" manslaughter cases.

*Relative culpability of Ms Shailer and Mr Haerewa*

[24] First, however, it is necessary to consider your respective roles in the offending against Moko. The Crown views Ms Shailer as more culpable than Mr Haerewa for Moko's death, because there is clear evidence that at least one of your assaults, stomping on Moko's stomach, was a cause of death. It is not clear from the pathology evidence, however, whether any of Mr Haerewa's assaults were a direct cause of death. Based on this distinction, the Crown submits that life imprisonment is an appropriate starting point for Ms Shailer and 14 to 16 years' imprisonment is an appropriate starting point for Mr Haerewa. Mr Edward submits that the appropriate starting point for Mr Haerewa is 12 to14 years' imprisonment.

[25] If the Court is of the view that a finite starting point is appropriate for Ms Shailer, the Crown submits that it should be 16 to 18 years' imprisonment. Mr Mansfield seeks a starting point of no more than 15 years' imprisonment for

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[3] Section 8(c). The maximum penalty will not be reserved for the worst possible case imaginable. It merely has to be "within the most serious of cases" rather than being the worst conceivable case: *R v Xie* [2007] 2 NZLR 240 (CA) at [26].

Ms Shailer, and an end sentence, after mitigating factors are taken into account, of about nine years' imprisonment.

[26] In my view, however, any differences in culpability between you are relatively minor. It is not appropriate, in my view, to focus solely or even primarily on who inflicted the fatal blow. That is because you both assaulted Moko continuously, and were also a party to the serious assaults inflicted by the other. Yours was a joint enterprise. While Ms Shailer's stomp on Moko's stomach directly contributed to his death, Mr Haerewa has admitted encouraging and abetting that act by also assaulting Moko repeatedly and by creating and encouraging a culture of violence against Moko. Neither of you sought medical help for Moko when he was dying. While I accept the Crown's submission that Ms Shailer is more culpable, the difference, in my view, is very minor.

*Assessing the seriousness of the offending – aggravating and mitigating features*

[27] I now turn to consider the overall seriousness of your offending. There are a number of aggravating features. Your offending involved extreme violence that was prolonged, repetitive and gratuitous. Your attacks included attacks to the head. Such attacks by their very nature carry a high risk of serious harm.

[28] Further, although this was not premeditated offending in the strict sense, nor was it truly spontaneous. You encouraged each other. The offending escalated. You could have stopped at any time, but did not do so. Mr Haerewa admitted that he "started getting into a routine of picking on Moko". A culture of violence developed. Serious injury resulted, culminating in Moko's death.

[29] A major aggravating feature of your offending is that Moko was a defenceless and extremely vulnerable child.[4] He was three years old. He was utterly helpless and dependent on you for his every need. Rather than care for him, however, you embarked on a joint campaign of violence against him. That violence continued even when he was gravely ill and near death. The Court of Appeal has stated that

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[4] Defencelessness of the victim is a specific aggravating factor listed in s 9A of the Sentencing Act 2002.

violence inflicted upon a child is worse than that directed at another adult, due to the particular vulnerability of children.[5]

[30] A further aggravating feature is that your offending was extremely cruel and callous. You inflicted appalling pain and suffering on a small child. In addition, you both deliberately concealed your offending from authorities, including by failing to seek medical assistance when it was clear that Moko was in desperate need of it.[6] His death was neither fast, nor painless.

[31] It is also of deep concern that Moko's sister and your own children witnessed many of your assaults on Moko, including some of the more brutal assaults.[7] It is not clear what effect this may have on them in the long-term.

[32] Your offending also involved an extremely serious breach of trust. Moko was entrusted into your care. His mother trusted you to look after him while she was looking after another child, who had been hospitalised. You betrayed her trust, as well as Moko's, in the worst way possible. We have heard Moko's mother read her victim impact statement in Court today. The extent of her pain and loss, and also that of Moko's father, who I understand is also here today, can barely be comprehended. They have lost a deeply loved son in the most horrific of circumstances. Other family members are also consumed with grief, anger and indeed guilt for not being able to save Moko. We have heard Moko's grandmother and his uncle speak movingly today of their loss. It has clearly left very deep scars.

[33] I am also required to take into account any mitigating features of your offending. Your counsel urge me to consider your offending in its broader context. They note that Moko and his sister ended up staying with you for much longer than the two week period that Ms Shailer had originally agreed to. Further, Mr Haerewa was not consulted about taking on the care of two more young children. Their arrival into your home is said to have put significant personal and financial pressure

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5 *R v Leuta* [2002] 1 NZLR 215 (CA) at [77].

6 The Court of Appeal has observed that perpetrators of violence against children, in order to avoid exposure of their insidious behaviour, often do not ensure proper care and treatment for their victims. This considerably aggravates their culpability: *R v Leuta*, above n 5, at [79]. Deliberate concealment of the offending from authorities is also a specific aggravating factor listed in s 9A of the Sentencing Act.

7 See *R v Curtis* HC Rotorua CRI-2007-063-4149, 4 February 2009 at [31]-[32].

on an already struggling family. You ended up caring for six children aged under eight, which you were ill equipped to cope with.

[34] I accept that you found Moko a challenging child to manage, and that you believed this was due to previous trauma in his life. You say that Moko behaved aggressively and violently towards your own children, which Ms Shailer in particular is said to have found difficult to cope with. Mr Mansfield also places significant emphasis on Ms Shailer's mental health issues, which I will address in further detail later when I discuss personal mitigating factors.

[35] Both defence counsel submit that you were let down by social service agencies, although I have seen very little evidence of that in the limited information before me. In particular, you do not appear to have said anything to alert the relevant agencies to the fact that Moko may have been at serious risk in your care. Indeed Mr Mansfield acknowledges that you were concerned not to disclose the care and health issues with Moko as you were afraid that, if you did, any investigation might lead to the removal of your own children.

[36] I have no doubt that you both found yourself in a very stressful situation and that, for a range of reasons, you struggled to cope. I note, however, that parents and caregivers throughout New Zealand care for children in extremely stressful and difficult circumstances, sometimes even living in cars or garages, but do not brutalise and kill the children in their care. Further, despite the obvious stress you were under, you appear to have been caring parents for your own four children. Moko, alone, was singled out for serious abuse.

[37] In summary, the extremity of the violence, the injuries, the cruelty, the callousness, the multiple acts of violence, Moko's extreme vulnerability and the breach of trust involved in your offending are all at the highest levels of seriousness. Considered together, these factors, in my view, bring this case into the category of the "most serious" of all manslaughter cases. There are no mitigating features of your offending that materially reduce its overall level of seriousness.

[38] To cross-check my conclusion that this case falls within the category of the "most serious" manslaughter cases I will briefly compare it to several other manslaughter cases over the last 25 years that have been held to be particularly serious.

*Comparable manslaughter cases*

[39] Life imprisonment has never been imposed for the manslaughter of a child in New Zealand. Indeed there appear to be only two, or possibly three, manslaughter cases in the last century where life imprisonment has been imposed at all. The first case is *R v Wickliffe*, in which the offender accidentally discharged his gun when it was pointed at the victim during the course of an armed robbery of a jeweller's shop.[8] The Court of Appeal considered it to be an extremely bad case of manslaughter. I consider your offending to be worse.

[40] The other case where life imprisonment was imposed involved the arson of a hotel. Although that case is perhaps more serious than this one, in that six people died, the facts are so different that it is not particularly helpful for comparison purposes.[9]

[41] Life imprisonment has also been seriously considered in at least two cases of manslaughter caused by single violent assaults on an adult victim.[10] In both of those cases a starting point of 15 years was ultimately adopted. I consider your offending to be significantly more serious than the offending in either of those cases because it involved sustained brutality against a vulnerable child.

[42] It is obviously not appropriate to compare your case with cases where parents and caregivers have been convicted of murder, such as the Nia Glassie case. You have only been convicted of manslaughter and therefore, for sentencing purposes, I must assume that you did not intend to kill Moko, and that you did not foresee that your violent assaults on him might cause his death.

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8 *R v Wickliffe* [1987] 1 NZLR 55 (CA).

9 *R v Lory* [2005] 1 NZLR 462 (CA). The third case is *R v Neiling* [1944] NZLR 426 (CA). It is reported on a procedural point and the facts of the case are unclear.

10 *R v Waipuka* [2013] NZHC 221; *Waipuka v R* [2013] NZCA 661; *R v Leonard* CA269/95, 6 September 1995.

[43] The two child manslaughter cases that I consider to be the most similar to yours are *R v Witika*[11] and *R v Haerewa*.[12] Delcelia Witika's mother and stepfather were convicted of manslaughter following a jury trial. Delcelia was subjected to violence and brutality of almost incomprehensible cruelty and was neglected appallingly. End sentences of 16 years' imprisonment were upheld on appeal. *Witika* is the only child manslaughter case I have reviewed where the abuse inflicted on the victim was, in my view, even more severe than in this case. In *Witika*, however, there was considerable uncertainty about who had done what. Both her mother and her stepfather blamed the other for Delcelia's injuries. Both of them were therefore sentenced as secondary parties. The Court of Appeal said that life imprisonment would have been appropriate if a principal offender could have been identified. The Court also observed, however, that the culpability of a party may be as great or even greater than the actual offender or may be very significantly less, depending on all the circumstances. In this case, I have found your culpability to be similar although Ms Shailer is marginally more culpable than Mr Haerewa.

[44] *R v Haerewa* related to the killing of four year old James Whakaruru by his 21 year old stepfather. The end sentence imposed was 12 years' imprisonment. Given the mitigating factors identified by the Judge this likely equates to a starting point of about 15 or 16 years' imprisonment if modern sentencing methodology had been adopted. I see your offending as marginally worse than the offending in that case.

[45] Counsel have referred me to a number of other child manslaughter cases, which I see as less serious than your case.[13] They involve starting points ranging from 10 years' to 12 and a half years' imprisonment.

[46] Delcelia Witika was killed 25 years ago and James Whakaruru 18 years ago. The offenders in those cases were therefore sentenced prior to the enactment of the Sentencing Act, which requires that Courts *must* impose the maximum penalty

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11 *R v Curtis*, above n 7.

12 *R v Haerewa* HC Napier S5/99, 18 August 1999; appeal dismissed ex parte in *Haerewa v R* CA431/99, 3 February 2000.

13 *R v Tipene* [2001] 2 NZLR 577 (CA); *R v Woodcock* [2010] NZCA 489; *R v Davis* HC Whangarei CRI-2009-029-990, 14 July 2011; See also *R v Ngati* HC Auckland CRI-2006-092-001919, 15 June 2007.

prescribed for an offence if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate.

[47] Further, in 2008 Parliament enacted s 9A of the Sentencing Act, which sets out certain aggravating factors that the Court must take into account when sentencing offenders for violent offending against children. The enactment of that section reflects the community's deep concern about child abuse in our society[14] and, in my view, is a clear indication by Parliament that violent offending against children needs to be treated with the utmost seriousness.[15] I also note that the charge of ill treatment of a child, that you have pleaded guilty to, was only enacted in 2012. It carries a maximum penalty of 10 years' imprisonment. The previous equivalent offence, cruelty to a child, carried a maximum penalty of five years' imprisonment. In my view this is yet a further signal from Parliament that it sees cases involving the ill treatment of children as being of the utmost seriousness.

*Conclusion on starting point*

[48] The aggravating features of your offending clearly bring it within the category of the most serious manslaughter cases. A comparison with other serious manslaughter cases confirms my view that your case should be treated as being at the upper end of seriousness in terms of manslaughter cases. Although I have found Ms Shailer to be slightly more culpable than Mr Haerewa the difference is only marginal and does not, in my view, result in one of you falling on the life imprisonment side of the line and the other on the finite sentence side of the line. I must therefore impose a sentence of life imprisonment on both of you unless your personal circumstances, including the fact that you pleaded guilty, make such a sentence inappropriate. I therefore now turn to consider your personal circumstances.

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14 *R v Tahuri* HC Wanganui CRI-2009-083-677, 28 June 2010 at [17]-[20].

15 The Court of Appeal has not yet definitively determined whether the intent of s 9A was to increase existing sentencing levels for this type of offending: *R v Pene* [2010] NZCA 387 at [13]; *R v Hall* [2012] NZCA 518 at [18]; see also *Waitohi v R* [2015] NZSC 43.

**Do personal circumstances make life imprisonment inappropriate?**

[49] Mr Haerewa, your pre-sentence report makes troubling reading. You told the report writer that you denied the facts set out in the summary of facts. You blamed Ms Shailer for the offending against Moko and claimed to have lied to protect her. You also tried to shift blame onto Moko and his mother, as well as social services.

[50] Any remorse you may now feel is very much at the lower end of the scale and does not entitle you to any discount on your sentence.

[51] You have a large number of previous convictions. Those that are potentially relevant for sentencing purposes, however, are fairly historic or relatively minor. Neither the Crown nor your counsel view your previous convictions as relevant for sentencing purposes. I agree with that assessment.

[52] You are a diagnosed schizophrenic. Your schizophrenia is being managed with medication and you do not seek a sentencing discount in respect of mental health issues.

[53] Ms Shailer, I now turn to consider your personal circumstances. The writer of your pre-sentence report notes that you do not have much insight into your offending, denying some of it and also apportioning blame to others. You claimed not to remember your offending against Moko because you were under the influence of drugs, both illicit and prescription. Overall the report writer concluded that you are either in denial regarding the gravity of your offending or you have little insight.

[54] A report prepared by a psychiatrist, Dr Chaplow, records that you have an adjustment disorder with anxiety and depression. It is clear from the evidence before me that you have struggled with depression for a considerable period of time, including during the period that Moko was in your care. In the past you have been a victim of violence yourself, although you say not in the last three years or so. Dr Chaplow concluded that you have a mental illness partially engendered by past trauma and current stress, and manifested by anxiety, sleep difficulties, depression and perhaps post-traumatic stress disorder and instances of dissociation. Dr Chaplow states that you may have dissociated and utilised more force against

Moko than you intended at the time. He says that your stress triggered rage and your rage triggered violence, at the end of which you evidenced insight into your behaviour, but were hesitant to take Moko to hospital for fear of the consequences.

[55] It is well established that some leniency in sentencing can be justified where recognised psychiatric or psychological disorders are clearly established as causative of offending.[16] I accept that you were suffering from depression and anxiety at the time of the offending. As for your claimed memory failures, I am somewhat sceptical regarding those. I also note your acknowledgement to the pre-sentence reporter writer that, to the extent that you had memory difficulties, they were likely associated with drug use. That is not a mitigating factor. I also have some reservations regarding the suggestion that you may have had a period (or periods) of dissociation when the most serious abuse occurred. Nevertheless I accept your counsel's submission that you are entitled to some sentencing discount for the mental health issues that have been identified by Dr Chaplow.

[56] Mr Mansfield also submits that you are genuinely remorseful and seeks a discount for exceptional remorse. He relies on Dr Chaplow's report, to some extent, in support of that submission, although I find the contents of that report to be only weakly indicative of remorse. Nor does your pre-sentence report suggest that you feel any remorse of sufficient magnitude to justify a sentence discount. I would therefore not allow a discount for remorse.

[57] In your favour you have a very limited criminal record, and your previous convictions are not relevant for present purposes. I accept that you were a good mother to your own children and you have realistic prospects of rehabilitation, although you will first need to gain a more realistic insight into your own offending. I am not persuaded that any youth discount is justified, given that you were an adult woman aged 26 at the time, and a mother of four.

[58] Ms Shailer, I do not see your personal mitigating factors as strong, I would, however, allow a five per cent discount to reflect your mental health issues, your previous good character and your prospects of rehabilitation.

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16 *R v Pene*, above n 16, at [15].

[59] I now consider your guilty pleas. The maximum sentencing discount available for guilty pleas is 25 per cent.[17] The Crown accepts that your guilty pleas should be treated as early guilty pleas. You are therefore both entitled to a significant guilty plea discount. By pleading guilty you have saved the cost and expense of a trial. The key prosecution witnesses, who are young children, have been spared the ordeal of giving evidence and being cross-examined. I also note, however, that the Crown's manslaughter case appears to have been a strong one, based on the summary of facts at least. You were originally charged with murder, but the murder charges were subsequently withdrawn. The reasons for that are not before me, as decisions as to the appropriate charges in any case are matters for the discretion of the prosecutor, not the Court. I am entitled to take into account, however, that you have already received some benefit for your guilty pleas, as you are no longer at risk of a murder conviction. Taking all of these matters into account, if I had adopted a finite starting point for your sentence, I would have given you a 20 per cent discount for your guilty pleas.

[60] This brings me to what is possibly the most difficult issue in your sentencing. Do your personal circumstances, including in particular your guilty pleas, make a sentence of life imprisonment inappropriate?

[61] Under the Sentencing Act the Court can set a minimum period of imprisonment for finite sentences, or where a sentence of life imprisonment is imposed for murder. In the rare cases, however, where life imprisonment is imposed for offending other than murder, the Court has no power to set a minimum term of imprisonment.[18] Accordingly the only possible way in which I can give you credit for your guilty pleas is to reduce your starting point of life imprisonment to a finite term of imprisonment. In my view it is appropriate to do so.

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17 *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [75].

18 By operation of law, under s 84(3) of the Parole Act 2002, the non-parole period of a sentence of imprisonment for life is 10 years, unless the Court has imposed a minimum term of imprisonment in respect of that sentence or a sentence of life without parole.

[62] Obviously, however, I cannot simply deduct a percentage amount from a starting point of life imprisonment to reach an appropriate end point. Rather, I approach the matter on the basis that your end sentences must take into account that I have found your case to be at the very upper end of manslaughter cases in terms of its seriousness. Moko died at your hands in the most brutal of circumstances and the end sentence imposed must reflect that. The sentence I impose must also denounce your conduct in the strongest possible terms, and hopefully deter others entrusted with the care of children from similar offending. A life sentence would clearly have been appropriate, but for your guilty pleas. Your end sentence must reflect that, while at the same time giving you credit for the fact that you have pleaded guilty and, in your case Ms Shailer, there are also other personal mitigating factors.

[63] Taking all of these matters into account, I have concluded that an end sentence of 17 years' imprisonment should be imposed on each of you. Although Ms Shailer is entitled to a slightly greater overall discount for personal mitigating factors than Mr Haerewa, I have also found that she is slightly more culpable. These two factors, in effect, cancel each other out.

[64] I am conscious that, to the best of my knowledge, this is the highest sentence ever imposed in New Zealand for the manslaughter of a child. Indeed it may well be the highest finite sentence imposed in any manslaughter case in New Zealand. As I have mentioned there have only been two, and possibly three, cases where life imprisonment has been imposed for manslaughter. The end sentence I have reached reflects, however, that the starting point I adopted was one of life imprisonment, unlike the various other child manslaughter cases I have referred to which all adopted a finite starting point.

**Minimum period of imprisonment**

[65] The final matter I must consider is the imposition of a minimum period of imprisonment. A minimum term is clearly required in order to denounce your conduct and deter others from similar offending. In my view a minimum period of imprisonment of nine years is appropriate for each of you.

**Sentence**

[66] Ms Shailer and Mr Haerewa please stand.

[67] On the charge of manslaughter you are each sentenced to 17 years' imprisonment, with a minimum period of imprisonment of nine years. On the charge of ill treatment of a child you are each sentenced to seven years and six months' imprisonment, to be served concurrently.

[68] You may stand down.

**Katz J**