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**<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360347.html>**

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKAURAU ROHE**

**CRI-2023-004-000253  
[2024] NZHC 2033**

**THE KING**

v

**JB**

Hearing: 24 July 2024

Appearances: R McCoubrey for Crown  
I Brookie and R Hinds for Defendant

Judgment: 24 July 2024

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**SENTENCING NOTES OF VENNING J**

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Solicitors: Meredith Connell, Auckland  
Counsel: I Brookie/R Hinds, Auckland

[1] JB, you are for sentence this morning having pleaded guilty to one charge of manslaughter and two representative charges of assault on a child.

[2] The summary of facts you pleaded guilty to sets out the background to your offending. In early 2022, you were 20 years old and the mother of two children. You were their sole caregiver. MB, the older child was born on 16 July 2019. He was aged two and a half when the offending came to the attention of the Police. He has special needs and suffers from a syndrome which impairs his physical and cognitive function. He is non-verbal and prone to seizures. After you became pregnant with him his father played no role in your life, nor in his.

[3] IB your second child, was born on 13 December 2021. He required care in the Intensive Care Unit for six days after being born. You had difficulty breastfeeding him and with his care generally initially and also after discharge from hospital. On 16 January 2022 IB died from injuries that you had inflicted on him. At the time he was almost five weeks old. His father did not live with you and did not share in the care of either child.

[4] When you were discharged from hospital following IB's birth you initially stayed with a friend who had been looking after MB while you were in hospital. While at her home MB became upset and starting crying. You became angry and used your hand to smack him on the back of the head.

[5] About two weeks later, at around 10.00 am in the morning of 26 December 2021 you visited friends with both children. At some point during the visit IB began to cry uncontrollably. You held him out in front of you at eye level and with your hands under his armpits you shook him back and forth, saying "stop crying". Later that same day you sent a number of messages to his father. Throughout the course of those messages you talked of the stress you were feeling with both children screaming and crying and refusing to eat. You said you could not "do this shit on your own anymore" and asked for help. You said you had nobody you could talk to or who could help you with the kids and that you were struggling mentally.

[6] A few days later, on 3 January 2022, you again sent a series of messages to IB's father. You threatened to harm the children, saying again that both kids were screaming and crying, and you were about to get angry with one of them. You repeated that message about 10 minutes later, referring to their constant crying and screaming which was getting on your nerves. IB's father responded but said he would be at least an hour. Later in the exchange you said "I can wait but not long before my anger becomes too much for the kids safety".

[7] The next day, 4 January, you sent more messages to IB's father in the late afternoon, again noting "the kids won't shut the fuck up" and that you were angry with both of them. You said you needed to leave the apartment before you got too angry and that the kids were not safe at all when you were angry. IB's father said he had no plan to visit that day.

[8] Two days later, on 6 January 2022, you had an appointment with the midwife, who examined IB and reported no concerns with either him or you.

[9] Then on 10 January 2022, you were at home in your apartment, and made a Facetime video call to your friend. She observed you sitting on the bed, holding IB under his armpits and out in front of you. IB was distressed and crying and she saw you shake him with force, causing his head to jolt backwards, whilst saying "there's no reason for you to be crying man, I'm fucking sick of it".

[10] Four days later, on 14 January 2022, you were at home with both children. At some point prior to about 9.00 pm, you became frustrated with IB. You lost control. You shook him forcefully, causing severe brain injuries that were a substantial and operative cause of his death. Between 9.00 and 9.02 pm, you left seven calls on his father's phone. When you were able to speak to him you asked him to go to the supermarket to get some Pamol.

[11] The next morning, at about 3.45 am, you called Healthline, but hung up before talking to anyone. At about 7:20 am, you made a further call to Healthline, and were on hold for 42 seconds before terminating the call. At no stage did you call any emergency services for assistance for IB. You did ask IB's father for a ride to the

hospital, but he refused, saying that he had to go to work. Ultimately you took a bus to Starship Hospital, where you arrived just after 10.20 in the morning. At this stage IB was having constant seizures and his GCS score was 4. He had bleeding around the brain, and had severe retinal haemorrhages and a retinal tear. The injuries had been caused by your mistreatment of him. IB's health continued to worsen, and he was pronounced dead at 5.35 pm on 16 January 2022.

[12] At post-mortem, he was found to have healing clavicle and rib fractures. They had been caused by you. IB also had a bruise above his left eyebrow and a skull fracture to his left parietal bone. You initially told hospital staff that injury was caused by your older child falling onto his head. The Crown accepts it cannot disprove that possibility in relation to that particular injury.

[13] In sentencing you the Court is required to have regard to the purposes and principles of the Sentencing Act 2002. In your case your conduct towards the children you were responsible for the care and safety of must be denounced. You must be held accountable for the harm done to your children. Your actions led to the death of IB and you injured MB. You also have accepted that you assaulted IB and MB on at least one, earlier occasion each, as you pleaded guilty to those representative charges. To the extent possible, the sentence should deter you, but also others from behaving in this way towards children. It goes without saying children are our most vulnerable members of society and they are dependent on parents for care and safety.

[14] The principles of sentencing that are of relevance are the need to take into account the gravity of the offending, your level of culpability and the seriousness of the offence as reflected by the maximum penalty. So far as is possible the Court must also impose a sentence consistent with sentences imposed in similar cases.

[15] The Court is also directed to have regard to s 9A of the Sentencing Act 2002 which sets out a number of aggravating features of cases involving violence against children. Four of them are present in your offending.

[16] I agree with the Crown's assessment that the aggravating features in this case include the actual and extreme violence inflicted on IB, his serious injury and death as

a consequence, his and MB's defencelessness and vulnerability, the breaches of trust and your deliberate concealment of the offending from the authorities by not seeking medical care for IB for at least 12 hours after what must have been the shaking incident, which ultimately led to his death.

[17] Having regard to the aggravating features the Crown submits a starting point of eight years' imprisonment is appropriate for the charge of manslaughter with an uplift of 18 months to reflect the other assault charges you have pleaded guilty to. The Crown accepts you are entitled to credits for your guilty plea and personal mitigating factors.

[18] Mr Brookie submits a global starting point of four and a half years is appropriate, having regard to your reduced culpability as a consequence of your own background and psychological profile. He argues for an end sentence of around two years which would have left the possibility of home detention. Mr Brookie supports his submissions by reference to the psychologist's report by Ms Bellve-Wack.

[19] The maximum penalty for manslaughter is life imprisonment. There is, however, no tariff for sentencing in manslaughter. The sentence in each case must reflect the particular facts of the case before the Court.

[20] The Crown notes the general range for offending involving violence inflicted against children has been considered in a number of cases and refers to *R v Roberts* and *R v L*.<sup>1</sup> In *R v Roberts*, Katz J noted:

[20] Each case turns on its own facts, but it appears from [a summary of cases] that the general range in sentence starting points for cases involving the manslaughter of young children from a single violent incident is between five and ten years imprisonment. Factors such as failure to seek medical attention and concealment of the offending are recognised as significant aggravating factors, often justifying starting points towards the higher end of that range. Sentence starting points above 10 years tend to be reserved for those cases involving multiple acts of violence.

[21] Mr Roberts had killed a 10-month-old child in his care. The child suffered a severe brain injury caused as a result of Mr Roberts violently shaking or hitting the

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<sup>1</sup> *R v Roberts* [2021] NZHC 146; and *R v L* [2020] NZHC 2911.

child's head against a hard surface. The sentence proceeded on the basis that in a moment of frustration in dealing with a sick and irritable child Mr Roberts had thrown him with considerable force against the wall or onto the floor. Katz J adopted a start point of eight years.

[22] In *R v L* Mr L had killed his three-month-old daughter.<sup>2</sup> Again her death was caused either by violent shaking, throwing, or striking her or some combination of those. After inflicting the injury he left her without medical assistance for a number of hours. The Court took a starting point of nine years' imprisonment.

[23] In *Woodcock v R*,<sup>3</sup> Mr Woodcock had killed his three-month-old daughter. The likely cause of death was a brain haemorrhage, caused by her head's sudden impact likely with a padded area such as carpet. Mr Woodcock faced other charges of causing grievous bodily harm with intent to cause grievous bodily harm, assault on a child and wilful neglect. The Court of Appeal considered a start point of 10 years was appropriate for the manslaughter charge alone.

[24] The Crown accepts *Woodcock* is more serious than the present case, your case, but nevertheless, having regard to the above authorities and your failure to obtain medical care for IB argue for the eight years as a start point.

[25] Mr Brookie says the cases referred to by the Crown involved more serious violence than in your case. He refers to a number of other cases, including *R v Gordon*, *R v Pene*, *R v Ngawhika*, and *R v Paea*.<sup>4</sup> Most of those cases involved ultimate end sentences of between two years and two years, eight months. Although I note the sentence in *Ngawhika* was home detention, I regard that as a case standing on its own. The Court of Appeal have stated on more than one occasion that the killing of a child is a serious offence which generally calls for imprisonment. In *Pene*, for example, the Court reviewed several sentences for similar offending and effectively approved a starting point of between five and seven years.<sup>5</sup>

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<sup>2</sup> *R v L*, above n 1.

<sup>3</sup> *Woodcock v R* [2010] NZCA 489.

<sup>4</sup> *R v Gordon* CA276/04, 16 December 2004; *R v Pene* [2010] NZCA 387; *R v Ngawhika* [2023] NZHC 520; and *R v Paea* [2016] NZHC 822.

<sup>5</sup> *R v Pene*, above n 4.

[26] In *Paea*,<sup>6</sup> where this Court took a start point of three years and nine months, the Court accepted it was a truly one-off incident with no evidence of ongoing abuse, which is different to the situation in your case. Further, there is the additional aggravating feature in your case that you failed to obtain medical treatment for IB when it must have been obvious he needed it. His symptoms when finally presented to hospital were particularly severe.

[27] Mr Brookie has accepted that the starting point taken by the Court will come down to whether the Court accepts there is a basis for diminished responsibility which reduces your culpability. In *Shaila v R* the Court accepted the starting point could be reduced where recognised psychiatric or psychological disorders were clearly causative of the offending.<sup>7</sup> Mr Brookie relies on the psychologist's, Ms Bellve-Wack's report in particular and has referred the Court to a number of passages from that report, including the passage at para 146 that:

The above-described clinical issues played an important role in [JB's] offending. Due to her adverse childhood circumstances, [JB] could not develop a secure attachment style which results from sustained interactions with emotionally safe, reliable and loving care givers. This provides the basis for the development of interpersonal intuition, empathy, trust and a feeling of basic security, which enables reciprocity in interpersonal relationships.

[28] But with respect to the reliance on that report and accepting the diagnosis of the Reactive Attachment Disorder, there is a significant difference between the features of that disorder and the violence inflicted on the children in this case and on more than one occasion.

[29] I note that the report suggests you are of at least average intelligence. While you were neglected both emotionally and physically in your first 18 months, and that supports the early diagnosis of Reactive Attachment Disorder, there is no formal diagnosis of PTSD or anything of that kind. As an adult the Reactive Attachment Disorder exhibits as a difficulty to form emotional attachments and maintain relationships and can also lead to fluctuating moods.

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<sup>6</sup> *R v Paea*, above n 4.

<sup>7</sup> *Shalier v R* [2017] NZCA 38 at *Nelson v R* [2014] NZCA 121 at [22].

[30] Despite Mr Brookie's submissions, on my review of the report in full context and having regard to the circumstances of your offending, I do not consider that the information in it or other information before the Court taken overall supports the conclusion that the disorder you suffer from was clearly causative of your offending in this case.

[31] While I accept you were effectively on your own with a child suffering from a disability, and another young baby who was not feeding and who you were obviously struggling to bond with as a result of the disorder, and you had no support from the fathers of either child, they are personal factors relevant to mitigation rather than factors which reduce the culpability of the offending itself.

[32] I take as a start point in your case for the manslaughter of six years, three months' imprisonment. I uplift that by nine months for the two representative charges of assault on a child. The assaults described in the summary of facts occurred on more than one occasion. They were serious, albeit caused by your frustration, your personal inadequacies and your inability to cope without support.

[33] While I generally agree with Mr Brookie's submission that the approach in *R v Tai*,<sup>8</sup> is of limited assistance in the facts of the present case, as a cross-check I note that your offending would be towards the upper end of band 2 or the lower end of band 3 in *Taueki*.<sup>9</sup>

[34] I turn to mitigating factors. A principal mitigating factor is your plea of guilty which is an acknowledgement of your responsibility, and a full credit of 25 per cent is available for that.

[35] I turn to your personal circumstances. In addition to the psychologist's report, the Court has a substantive and helpful, detailed report from the probation officer in the PAC report. As noted, the offending occurred when you were 20, almost 21. You had had your first child when you were 18. Your first romantic relationship was apparently with the father of your first child. You had met him through Facebook.

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<sup>8</sup> *R v Tai* [2010] NZCA 598.

<sup>9</sup> *R v Taueki* [2005] 3 NZLR 372.



However, once you became pregnant he effectively became distant and abandoned you. Similarly, the relationship with IB's father ended prior to his birth. You were effectively left on your own without any support in relation to either child. Neither father played a role in caring for the children.

[36] Your own family life and background can only be described as tragic. You grew up primarily in the care of Oranga Tamariki from the age of 18 months. You understand from what you have been told that your biological mother was neglectful and abusive towards you. A meeting was arranged with her at 16, but apparently it appeared "forced and unnatural" and you have not been in contact since.

[37] You were placed in a number of foster homes from the age of 18 months through to when you were 17 years old. You maintained contact with only one of those foster families. You had a close bond with an aunt but she passed away when you were 14 years old.

[38] At the age of 15 you came into contact with your father for the first time. The relationship has been difficult, but he has provided some support to you and is here to support you this morning.

[39] The only real support you received in relation to childcare, apart from one friend initially, was while you were under medical care. Post discharge from hospital the support has been limited. You understand your oldest child is in the care of a cousin which has been arranged by Oranga Tamariki. You told probation officers you were in a new relationship but you have not made your new partner aware of the charges that you face. There are other matters referred to in the pre-sentence report which are of concern to the Court but as they are personal I do not refer to them here.

[40] The only employment you have had is part-time work in takeaway bars and on a farm. You have struggled financially apart from emotionally. You previously used alcohol regularly and have used cannabis.

[41] As noted, the report Mr Brookie arranged has confirmed you have been diagnosed with Reactive Attachment Disorder. You are currently taking some antidepressants but have not yet engaged in counselling.

[42] JB, as I have said, I accept your personal circumstances and background to be tragic. But as Downs J indicated when you pleaded guilty, the sentence of this Court will be a sentence of imprisonment. It must be. The tragedy is ongoing in that because of your own personal experiences, including the failure of your parents to care for you and provide a stable family for you, you were inadequately prepared for motherhood and the responsibilities of caring for your two young children. You were effectively abandoned by the children's fathers, left to cope on your own without any level of practical or emotional support. Taking account of your personal circumstances, including the disorder that has been referred to, I consider a further 25 per cent discount is appropriate.

[43] Mr Brookie submits further discounts are available for youth and good character and prospects of rehabilitation. I do not consider a discount is available for good character in your case, given your relatively young age and your life to date. Nor do I consider there to be any particular indication of strong rehabilitative prospects. Frankly, they will be for you and the Parole Board. To the extent your youth and immaturity is relevant, it is factored into the generous discount for your general personal circumstances.

[44] JB please stand. On the charge of manslaughter of IB, you are sentenced to imprisonment for three years, six months. On the two representative charges of assault on a child you are sentenced to imprisonment for nine months in each case.

[45] The sentences are concurrent. The effective terms is three years, six months' imprisonment. You may be seated.

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Venning J