

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

**CRI-2015-092-009276
[2016] NZHC 2846**

THE QUEEN

v

**CINDY TAYLOR
LUANA TAYLOR
BRIAN TAYLOR**

Hearing: 28 November 2016

Appearances: N E Walker and J M Pridgeon for Crown
P Kaye and R Keam for C Taylor
M Mortimer and R McCausland for L Taylor
L Freyer and T Fitzgibbon for B Taylor

Judgment: 28 November 2016

SENTENCING NOTES OF WYLIE J

Solicitors/counsel:
Crown Solicitor, Manukau
P Kaye, Auckland
M Mortimer, Auckland
Public Defence Service, Manukau

Introduction

[1] Ms Taylor and Mr and Mrs Taylor, you appear today for sentencing today, having been found guilty of various charges by a jury on 5 August 2016. You may remain seated, until I ask you to stand.

[2] Ms Taylor, you were found guilty of manslaughter, by failing to provide your mother, Ena Lai Dung, with the necessaries of life, thereby causing her death. This is an offence pursuant to ss 150A, 151, 160(2)(b), 171 and 177 of the Crimes Act 1961. It is punishable by a maximum penalty of life imprisonment. You were also found guilty of two charges of dishonest use of documents, namely eftpos cards, belonging respectively to your deceased uncle, William Joe, and your mother. Both of these charges were representative charges. Each was an offence pursuant to s 228(1)(b) of the Crimes Act, and each carries a maximum penalty of seven years' imprisonment.

[3] Mr and Mrs Taylor, both of you were found guilty of failing to protect a vulnerable adult, namely Ms Dung. This is an offence pursuant to s 195A of the Crimes Act, and it is punishable by a maximum penalty of 10 years' imprisonment.

[4] You were all initially due to be sentenced on 21 September 2016. However, application was made by your counsel, Mrs Taylor, for an adjournment. She advised that a psychologist had been instructed to prepare a report in relation to you. I accepted that you should be given the opportunity to put before me all relevant information. At the conclusion of the trial I made it clear that a sentence of imprisonment was inevitable for you, Ms Taylor, and all but inevitable for you, Mr and Mrs Taylor. No doubt as a result, the adjournment request was not opposed by other counsel. Because one or more counsel, and/or I, were not available earlier, it was necessary to delay the sentencing until today.

[5] A psychologist's report has been received, albeit very belatedly, from a Dr Sakdalan. I refer to it shortly.

Relevant facts

[6] The deceased and her husband initially lived in Whakatane, with you, Ms Taylor. Although you have since taken the name Taylor by deed poll, you are the natural daughter of the deceased and her husband.

[7] When the Dungs were living in Whakatane, they came to know you, Mr and Mr Taylor, and you became long-term friends.

[8] In about 2007, Ms Dung and her husband moved to Taupo, and then, in late 2011 or early 2012, they moved to Auckland into a house occupied by you, Mr and Mrs Taylor, in Manurewa. Ms Dung's brother, William Joe, also lived in your house.

[9] At a relatively early stage, Ms Dung and her husband separated and he moved out. William Joe died in June 2013, and Ms Taylor, you subsequently moved into the house. It seems that you wanted to reconcile with your mother, having earlier become estranged from her. It was intended that you would look after your mother and an agreement in this regard was entered into with Mr and Mrs Taylor.

[10] Ms Dung continued to reside in the house at Manurewa. She had no substantive contact with anybody other than the three of you. The evidence at trial from a neighbour suggested that Ms Dung was "quite normal" in mid 2013. However when the same neighbour saw her again in September or October 2014, she was observed to be (in his words), "really skinny" with legs like "toothpicks". At much the same time the neighbour observed you, Ms Taylor, emotionally and physically abusing your mother. She was sitting on the backdoor steps at the time. You were standing over her, pulling her hair forcefully to make her look at you, and yelling abuse at her.

[11] Ms Taylor, by December 2014, you were working for a carparking company. You were regarded as a good employee. You worked long hours, and you willingly did night shifts. You had a long commute to get to work. You had little free time. Nevertheless you were also responsible for looking after your mother when you got home. You also did chores for Mr and Mrs Taylor, for example cleaning the house and running errands.

[12] On 16 January 2015, shortly after 9.00pm, a 111 call was made by you, Mrs Taylor, to the emergency services. You told the operator that you believed Ms Dung had passed away. Ambulance officers attended and Ms Dung's body was discovered.

[13] The ambulance officers described an extremely strong smell of urine and ammonia when they entered the house which got worse as they approached Ms Dung's bedroom. They found Ms Dung lying on a green plastic sheet, in her own urine and faeces. She was described as looking like a "scarecrow". She had skin tears on her arms. She was emaciated, and naked from the waist down. When a police officer used scissors to remove her top, it was noted her clothing had almost fused to her skin through the open sores on her upper body. She had multiple pressure sores and at least one necrotic ulcer on the lower part of her body. There was evidence of arthropod activity along both of her legs.

[14] The photographs of Ms Dung's body taken at the time, which were produced in evidence at the trial, were harrowing. The police were notified due to the state in which the body was found.

[15] Later post mortem examination revealed that, at some point, at least weeks but perhaps months earlier, Ms Dung had suffered 14 fractures to her ribs and sternum. The cause of those injuries was not clarified at trial and none of you were charged with causing them. The medical evidence was that they may have occurred as a result of multiple falls. It was clear that the injuries would have been extremely painful for Ms Dung. They interfered with her breathing. They effectively prevented her from moving. She needed significant assistance but little or no help was given to her. Rather, she was simply put to bed. She was not provided with pain relief.

[16] The evidence at trial suggested Ms Dung's health had declined significantly over the period of 10 – 20 days before she eventually died. Over this period Ms Dung was incapable of feeding herself, of moving, or of supporting herself in any way. She was completely dependent on the care of others in the household, in particular from you, Ms Taylor.

[17] At some stage Ms Dung had started to urinate and defecate in her bed. This was not the result of incontinence. Primarily it was because she could not move. A green plastic sheet, which had been purchased by you, Mr Taylor, was put beneath her. She continued to urinate and defecate on this plastic sheet, and as a result, her bodily wastes pooled around her. She suffered chemical burning to her buttocks, pelvis and upper thighs from contact with her own urine and faeces over a prolonged period.

[18] Ms Dung had developed multiple pressure sores from not being rotated or turned. Over the period of some seven to 10 days prior to her death, one of these sores had become a necrotic ulcer. In one place, the ulceration was so severe that it had penetrated to the bone. One ulcer had turned gangrenous.

[19] Ms Dung had also developed broncho-pneumonia.

[20] Ms Dung at some stage had stopped eating and drinking. The evidence suggested that she may have gone for a period of some 10 to 15 days without food and for a period of some four to five days without water. Her body weighed only 29 kilograms at the time of her death.

[21] Ms Dung was 76 years old. She died of dehydration and malnutrition. Her fractured ribs and sternum were considered to be contributing factors leading to her death. There was nothing to suggest that Ms Dung was not otherwise in good health. The expert opinion was that she would have lived if she had been provided with sustenance, good nursing care, pain relief, good skin care, proper hygiene and the like.

[22] Ms Taylor, you were responsible for the care of your mother in the period leading up to her death. You did not provide her with even the most basic care or assistance. You failed to provide her with the necessities of life and, in particular, with adequate nourishment, hydration, medical care, and hygiene. You failed to summon assistance for her or to arrange for medical attention or hospitalisation.

[23] Mr and Mrs Taylor, you were aware of Ms Dung's deteriorating condition, and of Ms Taylor's failure to look after her mother. The house was small –

approximately 95 square metres. You slept either in the master bedroom, which was next to Ms Dung's room, or in the lounge, which was only a short distance away down a hallway. You shared the same toilet and laundry facilities as Ms Dung. You observed food being taken to her room. You must have observed that it was often returned uneaten. You both knew about Ms Dung's loss of weight. You cannot have been unaware of the stench of urine, defecation and rotting flesh coming from Ms Dung's room. You knew that there were flies and maggots in her room, and that Ms Taylor was using cleaning products such as air fresheners and fly sprays extensively. Mr Taylor, you bought these products for her. You, Mrs Taylor, witnessed Ms Taylor being physically and verbally abusive to her mother. Mr Taylor, you bought the green plastic sheet which was placed underneath Ms Dung. You also told the police that you popped your head into Ms Dung's room to say hello to her on a reasonably regular basis, that you did so a week before she died, and that you saw her through the window on the day she died.

[24] Neither of you did anything. Rather you turned a blind eye to Ms Dung's obvious suffering.

[25] Eventually matters came to a head, and on 15 January 2015, you, Mrs Taylor, called Health Line. You told the registered nurse who took the call that Ms Dung was trying to kill herself, that she had become incontinent, that she was falling frequently, and that she refused to see a doctor or go to hospital. You said that Ms Dung was being force-fed fluids, but that she was not eating and had become quite thin.

[26] This call was made on the day prior to the discovery of Ms Dung's body. In my view, Mrs Taylor, you were underplaying the extreme circumstances that Ms Dung was then in. It was open to the jury to conclude that you were trying to construct a false narrative to explain Ms Dung's condition, in an attempt to shift any responsibility from yourself, your husband and perhaps Ms Taylor.

[27] Despite this phone call, none of you did anything further until the following day.

[28] It was not clear from the evidence when Ms Dung died. As I have noted, a 111 call was made at 9.04pm on 16 January by you, Mrs Taylor. You said that you had a feeling that Ms Dung had “passed” and that Ms Taylor was “freaking out”. However when you, Ms Taylor, were spoken to by the operator, you appeared calm. You confirmed that your mother was not awake and that she was not breathing. The operator instructed you to try and perform CPR on your mother. You refused. Instead you, Mrs Taylor, became aggravated and abusive towards the operator.

[29] The suggestion subsequently made by all three of you to the police, that Ms Dung was bulimic and depressed, that she had a drug problem, and that she caused or contributed to her own death, was rejected by the jury.

[30] Turning to the two additional charges faced by you, Ms Taylor, as I have noted, your uncle, William Joe, died in June 2013. He was in receipt of New Zealand superannuation at the time. His death was not notified to Births, Deaths and Marriages. His superannuation continued to be paid by the Ministry of Social Development into his bank account, on a fortnightly basis. In total, \$35,934.44 was deposited into his account. On the day that each payment was made, the full amount or close to it was withdrawn by you from various ATM machines across Manukau and Manurewa. The total amount withdrawn was \$35,141. Mr Joe had been the only signatory on the bank account. The account could however be accessed via an eftpos card, and when you were arrested, the eftpos card was found in your possession. You accepted that you had withdrawn the money from your uncle’s account but suggested in evidence you gave at trial that your uncle had authorised you to use his eftpos card after his death. You produced an agreement to this effect. Evidence called by the Crown suggested that this agreement was a fake and that your uncle’s signature had been forged.

[31] Similarly, Ms Dung’s death was not notified to the authorities either. She was also in receipt of superannuation at the time and the Ministry of Social Development continued making payments into her account. The full amount was withdrawn by you from various ATM machines. The total amount withdrawn was \$1,750. Again, Ms Dung had been the only signatory on her account. That account could be accessed using Ms Dung’s eftpos card, and on your arrest, you also had her eftpos card in your possession. You told the police that you had withdrawn the money from

her account. Again, you claimed that you had your mother's authority to do this. Again, the evidence suggested that the agreement to this effect which you produced was a fake, and that you had forged your mother's signature.

[32] The evidence also suggested that you knew that mother and your uncle were not entitled to receive superannuation payments after their death.

[33] It seems likely that you paid the money you took from your mother's and your uncle's accounts to Mrs Taylor.

Pre-sentence reports

Ms Taylor

[34] Ms Taylor, the probation officer who assessed you reported that this was your first appearance in Court.

[35] You are 43 years old. You are of New Zealand Chinese descent. You were born in Whakatane. You told the probation officer that you had a sheltered upbringing. You said that your mother was a strong and controlling person and that she was "the one who called the shots". You said that your parents had been convicted of drug related offences in 2007 and that you felt that your mother was at the centre of that. You said that you then severed your relationship with your parents and that it was not until after your uncle's death and your parents' separation, that you decided to try and reconcile with your mother.

[36] You were not in a relationship at the time of your arrest and you reported that you have been single for some years. You have no children. You presented as a mature woman, articulate in your responses. You asked intelligent questions in an attempt to understand the trial and sentencing processes.

[37] It was noted that you continue to maintain that you did not want to see your mother die, and that you were and still are in shock. You repeated the evidence which you gave at trial that you had planned to take your mother to hospital over the weekend, but that she had passed away on Friday 16 January 2015.

[38] The factors assessed as contributing to your offending were your attitudes, your negligence, your sense of entitlement and your inability to make the right choices for yourself.

[39] It was noted that you expressed remorse, both for the predicament you now find yourself in, and for your mother's passing, but that you struggle to come to terms with the fact that you have been convicted of causing her death. It was noted that it is to your credit that you have assumed responsibility for what occurred.

[40] Your risk of re-offending was assessed as low.

Mrs Taylor

[41] Mrs Taylor, you are aged 56 years. You are the eldest of three daughters. You were raised in Auckland. You told the probation officer that you spent the majority of your childhood in hospital and in a medical residence, Wilson House.

[42] You met your husband in Canada in your late 20s and you have been married for some 18 years. You told the probation officer that you had six children, but that five of them were tragically killed in a car accident in Canada. You reported having one remaining son who resides in Auckland. Telephone contact was made with your son. He confirmed that you were involved in a car accident, but denied any knowledge of the loss of five siblings.

[43] You were in receipt of a sickness benefit at the time of the offending. You told the probation officer that you had been the operator of a company called Trade Experts Ltd, which offered painting, landscaping and design services. The probation officer was unable to verify your assertions in this regard, and other information you gave the probation officer was contradicted by information already held by the department. The interviewing officer did not consider that your various disclosures were reliable.

[44] You have a 14 year history of criminal offending, dating back to 2002. You have 16 convictions for drug and dishonesty related offending. At the time of the present offending, you were serving a sentence of intensive supervision imposed in November 2014 for using forged documents and for drug related offending.

[45] The probation officer considered that your offending indicated a focus on your own needs and your desire for financial fulfilment. It was considered that you have failed to develop any insight into your offending supportive beliefs and attitudes, and that “your dishonesty trajectory” reflects a tendency for poor problem solving.

[46] You claim to suffer from a number of debilitating physical disabilities. You asserted that you were born with a degenerative bone disorder, and that you need a wheelchair for lower back chronic pain. However, you were unable to provide a name for the condition you say you suffer from. Nor could you provide the name of a doctor or medical specialist in this country who has been treating you. The probation officer considered that your medical needs are unclear and observed that your self report was vague.

[47] While you have been on remand awaiting sentence, you were subject to 60 minute observations. You did not suffer any seizures, although you claim that you are regularly affected by them.

[48] You were assessed as offering a medium likelihood of re-offending, based on your recidivist dishonesty offending. It was considered that your denial and ready attribution of responsibility to others are such that you pose a medium risk of harming others in the community.

[49] You continue to deny responsibility for the present offending. You continue to assert that you had no knowledge at all of Ms Dung’s condition. It was assessed that your “criminal versatility and recidivism”, demonstrate that you have little remorse, victim empathy or insight into your criminal conduct.

Mr Taylor

[50] Mr Taylor, you are 62 years of age. You are a painter. You claim that you have burnt follicles in your nose, and that as a result, you do not have a great sense of smell. You offered this as an explanation in support of your claim that you were not aware of Ms Dung’s condition when you were residing in the house in Manurewa with her. You continue to maintain that you were not guilty of the offending, and you claimed confusion that you have been charged and convicted.

You did not make any specific expressions of remorse during the interview, but did become visibly upset when discussing the state in which Ms Dung was found when she died. You expressed anger towards Ms Taylor in this regard.

[51] You have two previous convictions, both in 2006, for drug related offending which occurred in 2003. You received a sentence of community work, and records held by the Department of Corrections indicated that you complied well with that sentence.

[52] Your likelihood of re-offending was assessed as low, but you were assessed as posing a medium risk of harm to others. The factors identified as having contributed to your offending were the association you had with Ms Taylor, and your attitude towards the lack of care being provided to Ms Dung by her.

Dr Sakdalan's report

[53] Dr Sakdalan is a registered clinical psychologist. He interviewed you, Mrs Taylor, for approximately three hours, and perused a number of your earlier medical and other reports. He observed that at interview, you did not present as being defensive, but rather that you appeared to be confused, and struggling to come to terms with the seriousness of what had occurred to Ms Dung.

[54] Dr Sakdalan noted that you reported that you suffer from congenital dislocation, and that you sustained injuries in a car accident in Canada in the early 1990's. Dr Sakdalan referred to letters written by your doctors at that time.

[55] Dr Sakdalan reported that he discussed your Taylor's offending with you, and that you appeared genuine in your responses. He considered that you have been struggling to come to terms with the offending, but that your difficulties do not stem from a complete denial or minimisation of the offending, or a disregard for the victim. Dr Sakdalan expressed the view, Mrs Taylor, that you are more caught up with feelings of guilt for not intervening, and whether you could have done things differently in order to have averted Ms Dung's death. He recorded that you acknowledged that in retrospect you should have intervened, but that you continue to assert that you were not aware of the full extent of the problem, that you felt

awkward, and that you wished to respect Ms Dung's privacy. Dr Sakdalan expressed the view that you "appeared to express genuine feelings" of guilt at what had happened. He considered that you have started to develop a sense of realisation that, because Ms Dung was living with you, you were under some responsibility to protect Ms Dung from serious harm.

[56] Dr Sakdalan considered that your risk of re-offending in a similar manner is low. He noted that if you receive a custodial sentence, it would be appropriate for you to receive individual therapy in order to improve your insight into the dynamics of your offending, and that you will need special assistance given your medical condition.

Victim impact statement

[57] I have received a victim impact statement from Ms Dung's sister. That statement was read out by her son on the family's behalf.

[58] The family only found out about Ms Dung's death through media coverage of the trial. Concern was expressed at Ms Dung's suffering, and in relation to the pain and distress she must have suffered in dying slowly of dehydration and malnutrition. The family expressed hurt that you, Ms Taylor, allowed this to happen to your mother, and observed that Ms Dung did not deserve to die in the way that she did.

Submissions

[59] I received full submissions from Ms Walker on behalf of the Crown. She suggested that this is the first case of its kind to come before a New Zealand Court. She made reference to case law in other common law jurisdictions, and suggested that the approach taken by the Courts in those cases provides some guidance on how sentencing in similar cases, arising under similar legislation, has proceeded. She suggested that a starting point of around 10 to 12 years' imprisonment is appropriate for you, Ms Taylor, in relation to the manslaughter. She accepted that a reduction may be appropriate given your lack of previous convictions. The Crown did not seek a minimum term of imprisonment.

[60] In relation to the dishonesty offending, she submitted in her written submissions that a short, concurrent sentence of imprisonment should be imposed. In her oral submissions this morning she modified that view and acknowledged that the offending was not related to the manslaughter conviction.

[61] In relation to your offending Mr and Mrs Taylor, Ms Walker suggested that a starting point of around four to six years' imprisonment is appropriate, and accepted that reductions may be appropriate for personal mitigating factors. Again, minimum terms of imprisonment were not sought.

[62] Ms Taylor, on your behalf, Mr Kaye analysed the evidence of neglect relied on by the Crown in its submissions, and agreed with the Crown that there is no similar case in this country which can provide much in the way of guidance. He accepted that when all of the features of your offending are taken into account, a starting point in the vicinity of 10 years is "probably" appropriate. He noted that you have no criminal record, and that for all of your life you have been hard working. He submitted that this should entitle you to a discount. He briefly addressed the dishonesty offending in oral submissions this morning. He accepted that it was for the Court whether it should impose a sentence of imprisonment in relation to this offending and whether or not any sentence should be concurrent or cumulative with the sentence in relation to the manslaughter conviction.

[63] Mrs Taylor, on your behalf, Ms Mortimer confirmed that she had been unable to locate any previous sentencing decisions directly relevant to the section under which you have been convicted. She referred to similar sections contained in the Crimes Act, and submitted that a broad comparison can be drawn with those cases. She also agreed with the Crown that I should consider relevant sentencing decisions from the United Kingdom and other jurisdictions, albeit acknowledging that I need to make allowance for the different maximum sentences that applied in those cases. She took me through the various aggravating features of your offending which were suggested by the Crown. She accepted that the fact that Ms Dung died increases your level of culpability, but submitted that the duration of the offending was only over the 10 to 14 day period referred to by the pathologist in his evidence at trial. She did not accept that there was any legal duty on you to take over the day to day care of Ms Dung while Ms Taylor was absent from the house at work. She noted

that there was no familial relationship between you and Ms Dung, and warned against the risk of inadvertently double counting some of the factors identified by the Crown, in particular your ability to protect the deceased. She also suggested that various other aggravating features were absent in your offending. She suggested that you have expressed remorse and that you have a developing insight. In this regard she referred to Dr Sakdalan's report. She referred to what she said are your "obvious medical issues", and submitted that they will make serving a sentence of imprisonment more difficult for you. She noted that Dr Sakdalan accepted in his report that you suffer from a congenital dislocation, and a neuro degenerative bone disorder. She took issue with some aspects of the pre-sentence report and suggested that I should prefer Dr Sakdalan's report to the pre-sentence report. She submitted that a starting point of two to three years' imprisonment is appropriate and within range, and that I should reduce that sentence by 10 to 15 per cent, to allow for your remorse, the medical issues you suffer from, and other matters raised in Dr Sakdalan's report. She argued that the end sentence should be within the range of 19 to 30 months' imprisonment, and that the possibility of a sentence of home detention should be considered. She argued that a sentence of home detention would be sufficient to address accountability, denunciation, deterrence and protection of the community.

[64] Mr Taylor, on your behalf, Ms Freyer submitted that a starting point of no more than two years' imprisonment is appropriate and that such a sentence would reflect the gravity of your offending. She further submitted that that starting point should be discounted to reflect your age – 62 years. She argued that a final sentence of no more than 22 months' imprisonment would be appropriate, as being the least restrictive outcome appropriate in the circumstances, and that it would be appropriate to make an order under s 80I of the Sentencing Act 2002, granting you leave to apply for cancellation of the sentence of imprisonment and substitution of a sentence of home detention if you are able to find a suitable residence at a later date.

[65] I record that since Ms Freyer's submission was filed, a supplementary report has been prepared by the Probation Service. An address is available and it is suitable.

The Purposes and Principles of Sentencing

[66] In sentencing each of you, I have considered the principles set out in ss 7 and 8 of the Sentencing Act.

[67] In particular I have had regard to the need to hold each of you accountable for your offending and for the harm done by you, both to the deceased and to the community. I have also had regard to the need to promote in each of you a sense of responsibility for and an acknowledgment of your offending, and, importantly in this case, the need to denounce the conduct in which you were all involved. I have also been mindful of the need to deter others from committing the same or similar offences.

[68] I have taken into account the gravity of the offending with which each of you was involved, including your respective degrees of culpability. I have considered the seriousness of these types of offences. I have been mindful that I must impose the least restrictive outcome that is appropriate in the circumstances, while taking into account the seriousness of these types of offences as indicated by the maximum penalties prescribed by the legislature.

[69] I have had regard to the relevant aggravating and mitigating factors identified in s 9 of the Act, and in particular in s 9(2)(f), dealing with remorse.

Analysis

[70] I deal first with you, Ms Taylor, and then with you, Mr and Mrs Taylor.

Ms Taylor

Manslaughter

[71] There is no guideline case for manslaughter sentencing. The factual circumstances in each case vary significantly, and only limited guidance can be gleaned from earlier cases.¹ Rather culpability falls to be assessed in light of the circumstances of each case. The ultimate question, in any given case, is, what sentence meets the facts before the Court.

¹ *R v Bennet* CA457/03, 23 September 2004 at [68].

[72] In my view, your culpability is very high. Your offending is a serious example of its kind, warranting a high starting point.

[73] Your gross neglect and breach of accepted standards of human decency resulted in your mother's death. There are a number of aggravating features to your offending. In my view they are as follows:

- (a) First, there was Ms Dung's vulnerability. Vulnerability is inherent in the offence and I have been careful not to "double count" it. I refer to vulnerability because in this case, you caused it. Your mother was 76 years old. She was socially isolated but, at least initially, she was in good health. The evidence suggested that she got progressively thinner over a period of some months. You were responsible for her care at this stage. Gradually she became more and more vulnerable as her condition deteriorated, not because she was suffering from poor health, but because you were failing to look after her properly. Ultimately she had no means of helping herself, or even of obtaining help from others. She was bedridden. She could not move. She was in significant pain. Her survival became entirely dependent on those in the household and in particular, on you, Ms Taylor.
- (b) Secondly, there is the gross breach of trust involved in your offending. To an extent, this is inherent in the offence. The fact remains that Ms Dung was your mother, Ms Taylor. You failed to meet even the most basic expectations that she was entitled to repose in you as her only child.
- (c) Thirdly, there is the extent of the harm suffered by Ms Dung. It could not have been more serious. She died as a result of your neglect. Death of course is inherent in the offence of manslaughter, but the Court cannot ignore the way in which Ms Dung died. Her death was long, painful and unnecessary. It is difficult to imagine a death in worse or more degrading circumstances.

(d) Fourthly, and most significantly, there is the cruelty and callousness involved in your offending. There are a number of aspects to this.

(i) The pathologist, Dr Garavan, gave evidence that at least weeks before her death, Ms Dung fractured 14 of her ribs and her sternum. He said that it would have been extremely painful for her to have had so many broken ribs. He noted that the fractures would have interfered with Ms Dung's breathing, and prevented, or at the very least discouraged, her from moving about. He explained that pain management was required as well as oxygen to assist with breathing. The deceased's toxicology showed that no pain relief had been given to her prior to her death. Ms Taylor, you must have known that your mother had fallen more than once, and that she was suffering at least some of the injuries that were discovered at examination. You must have known that your mother was in extreme pain. Your failure to seek medical assistance or to offer your mother pain relief, is a significant aggravating factor.

(ii) Ms Dung was bedridden – probably as a result of the fractured ribs and sternum. Although the medical evidence suggested she retained control of her bladder and bowel, she was left to urinate and defecate in her own bed. There was no evidence of dementia. She had previously been a proud, attractive and well presented woman. It is likely that her inability to access a toilet was a great indignity for her. Little was done to alleviate her anguish or her physical circumstances. She was not cleaned or bathed regularly. This neglect went on for some time. There was extensive staining on both sides of her mattress. That must have occurred prior to the green plastic sheet being placed on top of the mattress. The evidence suggested that the green plastic sheet was put on the mattress for the purpose of protecting it, rather than Ms Dung. Further,

the plastic sheet exacerbated the situation. It caused urine and waste to pool around Ms Dung's body. As a result, she suffered chemical burning. The evidence was that this occurred because she was in contact with urine and faeces for a long period of time. No cotton sheet was placed on top of the green plastic sheet. There was nothing to absorb Ms Dung's urine or faeces. She was not given incontinence pads to wear and she was not wearing underwear at the time her body was discovered. Ms Taylor, you must have been aware of all of this.

- (iii) Next, Ms Dung was not turned so pressure sores formed on her legs, hips and heels. She developed at least one necrotic ulcer. One had developed gangrene, and it gave off a distinctive foul smell. There were signs of arthropod activity on the outside of both of Ms Dung's legs. Her skin had started to slough and die in different places. Basic nursing standards had not been observed. Again, Ms Taylor, you cannot have been unaware of your mother's state.
- (iv) Finally in this regard Ms Dung was suffering severe malnutrition and dehydration. Again this must have been obvious to you.

In my view Ms Dung's basic human dignity was ignored. Ms Taylor your neglect and failure to protect your mother was cruel and callous in the extreme.

- (e) Fifthly, there is the extent of your neglect. Your neglect occurred over a prolonged period, at least two weeks, but probably longer. Your failure was deep and multifaceted. You cannot have been unaware of your mother's deteriorating health. You failed to take your mother to hospital when she fractured her ribs and sternum. You did not call an ambulance at any point. You failed to provide her with any medical care, or even pain relief. You did not clean your mother properly or

move her. You did not provide her with adequate food or drink. It is difficult to comprehend your level of neglect, and in my judgment, your behaviour was inconsistent with basic standards of humanity.

- (f) Finally, there is nothing to suggest that you were incapable of looking after your mother. You came back into her life to effect a reconciliation. You voluntarily assumed responsibility for her care. You reached an agreement to this end with Mr and Mrs Taylor. There is nothing to suggest that you were incapable of looking after your mother. The evidence suggested that you were a person of some intelligence. You attended university at one stage. You were employed and you were earning a living, albeit that you were, for some reason, giving your wages direct to Mrs Taylor. I accept that you had little time, and that you must have been exhausted by your daily routine. Nevertheless, you took on extra hours over the December/January period, when your mother's condition was getting worse. You knew that it was your responsibility to look after your mother. You failed to cut back on your work commitments to do so.

[74] There are no mitigating features to your offending of which I am aware, and Mr Kaye did not suggest any.

[75] This is a case of manslaughter by neglect or omission. In my judgment, your offending is egregious and your culpability as I have said, is very high.

[76] In attempting to fix a starting point sentence for your offending, I have looked for analogous cases. However the principal section, s 150A of the Crimes Act, only came into force in its current form in March 2012. Insofar as I am aware it has not previously been considered by the Courts in any detail.

[77] I have considered the overseas cases cited to me by counsel.² Those cases are not directly applicable, although I accept that the general approach taken in them assists. The Courts overseas have recognised that victims in such situations are

² *R v Noseworthy* 2007 Carswell Ont 9604 (ONSC); *R v Cox* 2011 ONCA 58, (2011) 271 OAC 77; *R v Watts* [2002] 1 Cr App R (S) 56 (EWCA Crim); *R v H* [2009] EWCA Crim 397, [2009] 2 Cr App R (S) 90.; *BW v R* [2011] NSWCCA 176.

innocent, utterly vulnerable and defenceless. They have noted that caregivers are in positions of trust and that the Courts must provide a strong and firm response so as to deter other like minded individuals from giving vent to resentment, anger and frustration. In one of the cases, where the victim was an elderly patient with Alzheimer's disease, it was submitted that the sentencing range for manslaughter by neglect in Canada is five to eight years' imprisonment, and in another, concerning an infant, it was suggested that the sentencing range in England for such offending is nine to 15 years. There was no express acceptance or rejection of these suggested ranges, but the decisions appear to be broadly in line with them. Sentences imposed in the cases referred to me by the Crown range from seven years through to 16 years, in some cases following a trial and in others, following guilty pleas. I acknowledge the point made by Mr Kaye that there is quite a difference in the sentencing ranges adopted in the cases. That makes my task more difficult.

[78] There is one decision of the District Court in this country which is, in some respects, comparable.³ It involved the neglect of an elderly parent, giving rise to liability under another, and an earlier provision, in the Crimes Act of omitting, without lawful excuse, to provide the necessaries of life. That case did not result in the death of the victim, and the offence there in issue carried a maximum penalty of seven years' imprisonment. There are distinct differences from the present case, and in my view, the sentence there imposed – a starting point of three years reduced to two and a half years' imprisonment – is of little assistance.

[79] There are cases in this country where offenders have been sentenced for failing to provide the necessaries of life, although pursuant to different statutory provisions:

- (a) In one,⁴ the parents of a boy suffering from severe anaemia failed to provide him with basic medical treatment. The child died as a result of an infection. All that was required to save the child was an injection and the parents had been advised of that. They took no steps to get medical assistance. The parents were found guilty of manslaughter by omitting to perform a legal duty. An end sentence of

³ *R v Quinn* DC Napier CRI-2012-041-2610, 16 May 2014.

⁴ *R v Moorhead* HC Auckland T011974, 13 June 2002.

five years' imprisonment was imposed. In my view this sentence was low and I have not been assisted by it. The sentencing Judge may have been constrained by what he considered to be "a very generous" range advocated by the Crown – three to five years.⁵ Further, it appears that the parents had acted out of a misguided but nevertheless sincere religious conviction. Rather than resort to medical professionals, they had used natural remedies, which proved ineffective.

- (b) In another case,⁶ a mother took no steps to intervene when her seven month old child was being seriously abused by her partner over a period of some weeks. Over the last three days of the baby's life, the assaults became more serious and frequent. The child cried continuously and the mother knew that the child would soon die if she failed to act. She nevertheless did nothing. She was found guilty of manslaughter by failing to provide the necessaries of life. An eight to 10 year starting point was considered appropriate. An end sentence of seven years' imprisonment was imposed following a guilty plea.
- (c) In a third case, a child died of severe brain damage, caused by kicks to the head, inflicted by the mother's boyfriend and others. The mother did nothing. At one stage the child was rendered unconscious. The mother only took the child to hospital the following day. It was too late. Had medical assistance been sought sooner, the child would have lived. The mother was aware of the risks of violence to the child. The Court of Appeal upheld a starting point of nine and a half years on charges of failing provide the necessaries of life (a seven year starting point for that offence), and of failing to protect the victim from violence (a two and a half year starting point for that offence). The Court considered this to be "a stern sentence", but noted that in its view, it "needed to be".⁷

⁵ At [59].

⁶ *R v Harris* HC Wellington CRI-2004-078-1816, 26 August 2005.

⁷ *R v Kuka* [2009] NZCA 572 at [99].

(d) In yet another case, an end sentence of 10 years' imprisonment was imposed on an offender for failing to provide medical care for a 24 year old mentally ill relative who had been seriously assaulted.⁸ The offender did not assault the victim. Others in the family did and the offender was aware of this. The beatings increased in severity and the victim suffered significant injuries. The offender did eventually take the victim to hospital. However when he did so, he dragged her along the ground to the car. He had no remorse and was callously indifferent to the abuse that had occurred.

[80] In the latter three cases, the persons sentenced were not the persons primarily responsible for the victims' death. Rather they failed to intervene, protect or seek help for victims. Ms Taylor, you were the person responsible for your mother's care, and your lack of care and neglect directly caused her medical condition to deteriorate to the point that she died. You were responsible for her death. I consider your culpability to be greater than that of the offenders in each of the cases I have noted.

[81] There are a number of other cases where the offender – either alone or with others – assaulted or otherwise took steps affecting the victim, and compounded that

⁸ *R v Filimoehala* CA367/99, 16 December 1999 at [63]-[67].

offending by then failing to seek assistance or provide help.⁹ I have considered these various cases. Most involved a high level of brutality, followed by neglect. Starting points and sentences have ranged from nine years' and six months' imprisonment to life imprisonment. I do not consider any of these cases to be particularly helpful because the factual situations were very different. Ms Taylor, you did not resort to violence against your mother, at least not on a regular basis, and such limited violence as was observed by your neighbour did not contribute to her vulnerability or death. There was no brutality as such in your actions.

[82] Having considered the nature of your offending and your high level of culpability, in my judgment, a starting point of 12 years' imprisonment is appropriate. Your offending involved gross neglect by you as a daughter towards your mother. It is a very serious example of its kind, and it warrants a strong deterrent sentence.

⁹ *R v Hamer* [2005] 2 NZLR 81 (CA) – victim overdosed on offender's methadone. Offender a methadone user and a qualified nurse who was aware of the consequences of overdose. Offender did nothing for 17 and a half hours. At one stage he noted that the victim was suffering from cyanosis. He propped her up on pillows, deliberately causing her airways to be partially blocked. He did not call an ambulance until sometime later. He knew that the longer he waited the more likely it was that the victim would die. He failed to give the ambulance officer adequate information. A starting point of 10 years' imprisonment was adopted. The Court of Appeal said that the sentence was near the top of the available range; *R v Hokai* HC Auckland S4-03, 2 May 2003 – victim had significant mental and physical problems. H severely assaulted him. He then dragged the victim to his bed, where he and others tried to wash and clean him. Victim was then placed on the lounge floor where he was found dead three days later. During that time he was incapacitated, immobile and in considerable pain. He received no medical attention. A starting point of nine and a half years was adopted; *R v Proude* HC Auckland CRI-2008-092-001926, 25 May 2010 – deceased 35 year old intellectually impaired woman. She was subjected to serious assaults, including by the appellant. Eventually she was incapacitated. The offender did not seek help or assistance for her. When she eventually died, offender and others disposed of her body. On charges of manslaughter, a starting point of 11 years' imprisonment was adopted. The starting point was uplifted to 12 years and six months for one offender, and 13 years for the other, in relation to additional offending; *R v Witika* [1993] 2 NZLR 424 (CA) – the victim a two year old child, subjected to extreme abuse. The cause of death was peritonitis following blunt trauma to her abdomen. She was left at home on the day that she died. The mother admitted that she knew the child was going to die. She and her partner spent the day with friends and returned to find the child dead. They had not sought help for her. The Court of Appeal said that life imprisonment would have been appropriate if the principle offender had been able to be identified. Sentences of 16 years' imprisonment were upheld; *R v Shailer* [2016] NZHC 1414 – over a three month period offenders subjected a three year old child to escalating assaults. Offenders were aware that the child was unwell. Offender kept him in his room, initially gave him water but then refused to provide further water. The assaults continued. No medical attention was sought for the child. No assistance was provided to him. The offending was concealed from the authorities. Prompt medical attention would have saved the child's life. A starting point of life imprisonment was adopted.

[83] I now turn to consider whether or not there are any aggravating or mitigating factors personal to you.

[84] There are no personal aggravating factors insofar as I am aware.

[85] As I have noted, you are 43 years old. You have no previous convictions, and your risk of re-offending is considered to be low. Normally you would receive some limited credit for your previous good character. However here you breached a relationship of trust, and in such circumstances, a good character discount is not easy to justify.¹⁰ I also note that you were involved in dishonesty offending in relation to your uncle's superannuation payments at the time of your offending against your mother. In my view, a good character discount is not justified in your case, and I decline to reduce your sentence to allow for it.

[86] Mr Kaye in his written submissions accepted that there were no other areas where a discount can be claimed. This morning he did suggest that you may be entitled to a discount for remorse. I have considered this issue.

[87] The pre-sentence report suggested that you continue to minimise your role in your mother's death. You claimed to be shocked by everything that has happened, and you asserted that you planned to take your mother to hospital over the weekend, but that she passed away on 16 January. I find that assertion difficult to accept. It must have been patently clear that your mother needed hospitalisation and medical assistance well before she died. While you expressed remorse to the report writer, it seems to me that that remorse is more for the predicament you find yourself in, than for your mother's death.

[88] It was suggested in the pre-sentence report that you have accepted responsibility for what occurred. I suspect however that this is out of some sense of misguided loyalty to Mr Taylor, and, particularly, Mrs Taylor. For reasons which were not fully explored at trial and which are unclear to me, you seem to have been in Mrs Taylor's thrall. I am not persuaded that, even now, you fully appreciate or acknowledge the role you played in your mother's death. I decline to allow you any

¹⁰ *King v R* [2015] NZCA 475.

reduction from the starting point I have already noted for remorse, or for your acceptance of responsibility.

[89] It follows that the end sentence for the offence of manslaughter is one of 12 years' imprisonment.

Dishonesty offending

[90] I now turn to consider the offending involving the dishonest use of the eftpos cards.

[91] Again, there is no tariff for offending of this kind.

[92] The offending is not insignificant. A large sum of money was taken – in total some \$37,000. The offending in respect of your uncle's eftpos card occurred over a period of some 18 months. The offending in respect of your mother's eftpos card occurred over a shorter period, but that was inevitable, given her death and the involvement of the police. The offending was not sophisticated, but it involved a clear fraud on the welfare system, which relies at least in part on honesty if it is to function fairly and effectively. The offending was compounded by your attempts to conceal it. You relied on a signed authority. The evidence strongly suggested that that document was a fake and that the signatures on it had been forged.

[93] There are no mitigating circumstances in relation to the offending.

[94] In my view, the appropriate starting point for your offending, including in respect of your uncle's account and in respect of your mother's account, is in the vicinity of 15 months' imprisonment.¹¹

¹¹ *Frost v Ministry of Social Development* [2013] NZHC 1239 – failure to disclose relationship over two years – received \$27,000 – a 12 month starting point; *Heta v R* [2012] NZCA 267 – failure to disclose relationship over a period of 19 months – received \$51,000 over five years – 15 month starting point; *Cameron v R* [2015] NZCA 363 - \$43,000 obtained over two years for failing to declare relationship – 16 month starting point; *Huirua v Ministry of Social Development* [2013] NZHC 2785 – failure to declare relationship over four years, tenancy agreement forged – received \$53,000 – 18 month starting point; *Tsega v Housing New Zealand Corporation* [2013] NZHC 2263 – failure to declare true income over seven years, received \$33,000 – 18 month starting point; *Maa v Ministry of Social Development* [2013] NZHC 1846 – failure to disclose employment over four years – received \$35,000 – 18 month starting point; *Clarke v Police* [2015] NZHC 1692, on appeal [2016] NZCA 84 – used multiple identities to claim benefit over three years – overpayment of \$41,000 – 20 month starting point.

[95] There are no relevant personal mitigating or aggravating personal circumstances.

[96] The manslaughter offending and the dishonesty offending are different in kind, and they were unconnected.¹² But notwithstanding the Crown's initial submission, in my view, cumulative sentences are appropriate.

Totality

[97] I have considered whether an end sentence of thirteen years and three months' imprisonment is out of proportion to your offending as a whole and is inconsistent with the totality principle. I do not consider that the sentence is disproportionate, nor do I consider that the end sentence I propose is crushing given the overall circumstances of your offending. Rather, it seems to me that the sentence properly reflects your overall criminality.

Sentence

[98] Ms Taylor, will you please stand.

[99] In respect of the offence of manslaughter, I sentence you to 12 years' imprisonment.

[100] In respect of the offence of dishonestly using a document in relation to your uncle, William Joe's, account, I sentence you to 15 months' imprisonment. In respect of the offence of dishonestly using a document in relation to your mother's account, I sentence you to three months' imprisonment. The sentences for the two dishonesty offences are to be served concurrently.

[101] The sentence for the offence of manslaughter, and the total sentences in respect of the dishonesty offences, are to be served cumulatively. It follows that the end sentence I am imposing on you is one of 13 years and three months' imprisonment.

¹² Sentencing Act 2002, s 84(1).

Minimum period of imprisonment

[102] I am empowered to order that you serve a minimum period of imprisonment in relation to your conviction for manslaughter. I can do so in certain circumstances which are set out in the Sentencing Act.¹³

[103] I accept that there is no need to deter you personally from further offending, nor to protect the community from you. I did consider whether a minimum period of imprisonment is necessary to hold you accountable for the harm you did to your mother, and to the community, or to deter others from committing the same or a similar offence. I have concluded that a minimum term of imprisonment is not necessary. The sentence I have imposed on you in relation to the manslaughter is stern, and in my view it is sufficient in itself to hold you accountable, and to deter others. I note that the Crown did not seek a minimum term of imprisonment, and I do not impose such a term.

Mr and Mrs Taylor

[104] Mr and Mrs Taylor, I now turn to your offending.

[105] You are each being sentenced on a single charge of failing to protect a vulnerable adult, pursuant to s 195A of the Crimes Act. There is no guideline sentencing judgment, and neither counsel, nor I, have been able to find any prior case involving s 195A. This appears to be the first sentencing under the provision since it was enacted in March 2012.

[106] Section 195A was introduced following a recommendation from the Law Commission that a new offence of failing to protect a child or vulnerable adult from serious physical harm or death should be created. Prior to its enactment, there were two provisions dealing with neglect and ill treatment of children. Neither of those provisions protected vulnerable adults, and neither created liability for those who, while not themselves the perpetrators of ill treatment or neglect, resided in the same household as the victim, had knowledge of the risk of death or serious injury as a

¹³ Section 86.

result of ill treatment or neglect by another, but failed to take reasonable steps to prevent that risk.¹⁴

[107] The Crimes Act previously provided a maximum penalty for this type of offending against children of five years' imprisonment. However, for the new offence created under s 195A, the Law Commission recommended a maximum penalty of 10 years' imprisonment. The Law Commission stated that this was to reflect the fact that the worse class of case would be one in which the victim had died, and the negligence had been truly gross, for example, where the offender deliberately closed his or her eyes to the conduct over a prolonged period.¹⁵

[108] A similar approach was taken by the Select Committee which considered the Bill, and by the then Minister of Justice – the Honourable Simon Power, when the Bill was read in the House for the second time.¹⁶

[109] Against this background, I turn to consider your offending.

[110] First, as I have already noted, this is an egregious case of its kind. Ms Dung died. Ms Taylor's negligence was gross. In my view, so was your offending. You both deliberately closed your eyes to what was occurring, and over a prolonged period. I reject the submission made by Ms Freyer on behalf of you Mr Taylor, that Ms Dung was neither defenceless nor completely dependent. It is clear, that ultimately, Ms Dung was utterly defenceless and completely dependent. I also reject the submission made on your behalf Mrs Taylor that the duration of the offending was only over a 10-14 day period. The medical evidence was that Ms Dung's weight went down over a period of months. This was consistent with the neighbour's observation of her. You had both known Ms Dung for many years. You must have observed her gradual loss of weight. You did nothing.

[111] There are many aggravating features to your offending.

¹⁴ Law Commission *Review of Part 8 of the Crimes Act 1961: Crimes Against the Person* (NZLC R111, 2009)

¹⁵ At [5.30].

¹⁶ Social Services Committee *Crimes Amendment Bill (No 2)* (18 August 2011) at 1; and (13 September 2011) 675 NZPD 675.

- (a) First, there are the consequences of your offending. Death is not inherent in the offence created by s 195A. It follows that the extent of the harm resulting from your offending is relevant. Here you both turned a blind eye to what, in my judgment, was the obvious risk not only of death, but of a slow and painful death. You ignored a dying woman in your own house. In my view, this is a major aggravating feature.
- (b) Secondly, your offending was callous. While I accept that most offending under s 195A is likely to be callous, because it involves a failure to protect others at risk, in this case the risk was extreme and obvious. You both knew that Ms Taylor was working long hours, and that she had to spend significant periods commuting to and from work. You must have known that, when Ms Taylor was away from the house, Ms Dung still required care and assistance. Further, you all lived in a small house. You must have been able to smell the stench coming from Ms Dung's room. Indeed you, Mr Taylor, bought air fresheners for Ms Taylor to use. You also bought insect sprays. This suggests you were aware of the smell and of the insect activity which was occurring in the room. You, Mrs Taylor, were aware of the assault which was carried out by Ms Taylor on Ms Dung. You both knew that Ms Dung was no longer having meals in the main part of the house but was having them taken to her room. You were aware that food was brought back and that Ms Dung was not eating properly. You, Mrs Taylor, suggested that Ms Dung should be given protein shakes. This suggests that you were aware that she was not eating. It must have been obvious to both of you that Ms Dung was urinating and defecating in her bed. The smell this would have made must have been obvious. Mr Taylor, you bought the green plastic sheet to save the mattress from staining. There were very many indicators of risk to Ms Dung. You ignored all of them. You both turned a blind eye to Ms Dung's deteriorating condition and suffering.

- (c) Thirdly, there is the call made by you, Mrs Taylor, to Health Line on 15 January 2015. Ms Mortimer suggested this was a mitigating factor. I disagree. In my view, the call is an aggravating feature, because you concealed the offending and Ms Dung's true condition when you telephoned Health Line. In my judgment you lied about the condition that Ms Dung was then in, in an attempt to conceal your own conduct, and to try and foist responsibility on Ms Dung herself.
- (d) Fourthly, there is the extent of your indifference. Neither of you had an excuse for not stepping in to protect Ms Dung.
- (i) Mrs Taylor, you suggested that your claimed disability prevented you from doing so. I have some scepticism about that claim. It is noteworthy that the neighbour saw you out of your wheelchair at one stage, assaulting Ms Taylor. I also note the comments made by the probation officer, and the fact that you do not appear to have been under any form of medical care, notwithstanding the grievous condition you claim to be in. While I note that Dr Sakdalan accepted that you suffer from various medical conditions, he appears to have done so on the basis of your self report to him and various letters written by doctors, presumably in Canada, as long ago as 1992 and 1994. He did not carry out any independent medical examination. He did refer to a letter dated February 2016. That letter has not been provided to me and I do not know if the doctor who wrote it conducted any medical examination of your.
- (ii) You, Mr Taylor, claim that you were preoccupied in caring for your wife. For the reasons I have explained, I do not accept that that was a proper excuse, or indeed that she needed the care you claim to have lavished on her.

- (iii) In any event there was nothing to stop either of you from summoning medical assistance for Ms Dung. You did not do so.
- (iv) This is not a situation where you were financially constrained. Mrs Taylor, you were receiving both the late Mr Joe's and Ms Dung's superannuation payments. You were also receiving Ms Taylor's wages. You appear to have been the dominating influence in the house, controlling others. As I have already noted, for reasons which were not clear to me, Ms Taylor was in your thrall – even to the extent of adopting your surname by deed poll. You persuaded her to pay all of her money over to you. You directed her to do the shopping on your behalf and to clean the house.
- (v) You, Mr Taylor, were working, and it appears that you were also responsible for obtaining provisions for the household.

Notwithstanding your respective protestations, in my judgment this is not a situation where either of you were unable to assist, or at least summon assistance for, Ms Dung.

[112] As I have noted, there are no cases directly in point. I have considered the English authorities referred to me by counsel.¹⁷ The provisions there in issue differ from those contained in s 195A. I note that in one case, the offender was sentenced to a 24 month community order. In another, one offender was sentenced to three years' imprisonment, two others were sentenced to two years' imprisonment, and a third to 12 months' imprisonment (suspended for two years with an order that he carry out unpaid work). In a third case, the offender was sentenced to a six year sentence following a guilty plea. The starting point must have been higher.

¹⁷ *R v Stephens* [2007] EWCA Crim 1249; *R v Kahn* [2009] EWCA Crim 2, [2009] 1 WLR 2036; *R v Liu & Tan* [2006] EWCA Crim 3321, [2007] 2 Cr App R (S) 12.

[113] I have also considered similar cases in this country, which arose under another section – s 195 of the Crimes Act, which deals with the omission to discharge or perform any legal duty, the omission of which is likely to cause suffering, injury, adverse effects to health or any mental disorder or disability. This section focuses on the situation where the offender has the primary duty of care. It previously had a maximum penalty of five years. This was increased to 10 years, when s 195A was enacted. Earlier cases under s 195 are therefore of little help.

[114] More recent cases are of some assistance. In one, the offenders were the parents of two boys, who were the subject of serious physical abuse. They had the primary care of the children, but it was unclear who had inflicted the injuries. The children were ultimately taken to hospital, but only after they had suffered a number of broken bones and other injuries. A starting point of six years' imprisonment was upheld on appeal.¹⁸ In another case, the offenders were sentenced to seven years and six months' imprisonment for their ill treatment of a child. The offenders were primarily responsible for the injuries; they were also the principal care givers. The sentence imposed under s 195 was not however discussed in any detail by the sentencing Judge.¹⁹ In a third case, a three year old suffered a broken leg.²⁰ By the time she was taken to hospital, the wound was infected and the broken bones were visible. A starting point of three years and six months' imprisonment was adopted. In a fourth case, the parents of a child were convicted following trial of failing to provide the necessaries of life to a child.²¹ A starting point of three years' imprisonment was adopted.

[115] In the present case, you were not directly responsible for Ms Dung's condition. Rather, you turned a blind eye to it. Your culpability was, in my view, greater than that in many of the cases I have noted, given that there was a clear risk to Ms Dung's life, and indeed that she did die. Further, there was a prolonged breach of duty by you.

¹⁸ *M (CA 559/2015) v R* [2016] NZCA 53 at [31]. Leave to appeal refused *M (SC 31/2016) v R* [2016] NZSC 72.

¹⁹ *R v Shailer*, above n 9.

²⁰ *P (CA 866/2013) v R* [2014] NZCA 211; And see *Maulolo v R* [2014] NZCA 439 – three years' imprisonment (maximum of five years' imprisonment).

²¹ *R v Hirchkop* CA 506/52, 31 May 2006 (maximum of seven years' imprisonment, under s 152 of the Crimes Act, now repealed).

[116] In the circumstances, I adopt as a starting point a sentence of six years and six months' imprisonment for you, Mrs Taylor, and a sentence of six years' imprisonment for you, Mr Taylor. I consider that you are more culpable, Mrs Taylor, because you were the controlling influence in the house and because you attempted to conceal the offending in your phone call to Health Line.

[117] I now turn to consider personal aggravating and mitigating circumstances.

[118] You both have previous convictions. The Crown does not seek an uplift in relation to those convictions, and I do not consider that it is appropriate to impose one. Your previous offending has nothing in common with the present offending.

[119] I do note, Mrs Taylor, that your offending against Ms Dung took place while you were subject to a sentence of intensive supervision. However given that that sentence was imposed in relation to unrelated offending, I do not increase the starting point I have adopted.

[120] Mrs Taylor, I have considered the medical conditions you claim to suffer from. For the reasons I have already noted, considerable uncertainty surrounds these conditions. I have not been provided with any examination based medical report or other reliable information in relation to them. I accept that it is possible that such medical conditions as you may suffer from may make a sentence of imprisonment more difficult for you. However the medical information currently available is not sufficient for me to assess whether or not a discount is required or appropriate. Further, and in any event, I suspect that appropriate care can be provided for you within the prison environment.

[121] Mrs Taylor, your counsel suggested that you have expressed remorse. She referred to Dr Sakdalan's report. As I have noted, he says that you have recently started to develop a sense of realisation that, because Ms Dung was living with you, you held some responsibility to protect her from harm. He suggests that you have struggled to come to terms with your offending, but that your difficulties do not stem from a complete denial or minimisation of the offending, or a disregard for the victim. He considered that you are more caught up with your feelings of guilt for not

intervening, and whether or not you could have done things differently in order to have averted Ms Dung's death.

[122] These observations are at odds with the pre-sentence report. They are also at odds with my own observations of you at trial. My observations at trial suggested to me that you are self absorbed and that you have little concern or empathy for others.

[123] I accept however that Dr Sakdalan has seen you since the convictions were entered, and that he spent some time interviewing you. Given Dr Sakdalan's observations, I accept that you have belatedly shown some remorse and empathy for Ms Dung. I am prepared to allow you a discount of three months to recognise this.

[124] Mr Taylor, your counsel suggested that your age suggests that a discount is appropriate. I do not accept that submission. There is nothing to suggest that your age means that a sentence would be appreciably harsher in its impact on you, or that you face particular ill health. Nor has any authority been cited for that submission made by your counsel. In the absence of evidence or authority, I do not consider that a reduction in the sentence which might otherwise be imposed is appropriate.

[125] There are no other mitigating circumstances personal to either of you that I am aware of.

Sentences

[126] Mr Taylor, will you please stand. Mrs Taylor, you may remain seated in your wheelchair.

[127] Mrs Taylor, in respect of the offence of failing to protect a vulnerable adult, I sentence you to a term of imprisonment of six years and three months.

[128] Mr Taylor, in respect of the same offence of failing to protect a vulnerable adult, I sentence you to a term of imprisonment of six years.

Minimum term of imprisonment

[129] The Crown did not seek a minimum term of imprisonment for either of you. I do not consider that it is appropriate to impose such a term, and I do not do so.

Sentence of intensive supervision

[130] Mrs Taylor, you have been convicted of an offence punishable by imprisonment, and you are being sentenced to a substantial term of imprisonment. At the request of the probation officer who prepared the pre-sentence report, I cancel the sentence of intensive supervision you are subject to, pursuant to s 54K(2) of the Sentencing Act.

[131] You may sit down Mr Taylor.

Suppression

[132] During the trial I suppressed publication of any reference to Mrs Taylor's 2007 offending.

[133] Whether this order should remain in place was raised by counsel.

[134] After hearing from counsel I am satisfied that fair trial issues are no longer relevant. There is nothing in the psychological report prepared by Dr Sakdalan which suggests that there could be any impact if the details of the 2007 offending by Mrs Taylor are put in the public domain. I can see no reason why that information should remain suppressed.

[135] The media may report the 2007 conviction entered against Mrs Taylor. I think that the media have already been provided with copies of the summary of facts in relation to that. I have referred to other offending both by Mrs Taylor and by Mr Taylor in open Court today. That may also be reported by the media.

[136] You may all stand down.

Wylie J