New South Wales
Supreme Court

CITATION :	**R v WILSON [2003] NSWSC 1257**
HEARING DATE(S) :	7.10.03, 8.10.03, 9.10.03, 10.10.03, 13.10.03, 14.10.03, 15.10.03, 16.10.03, 17.10.03, 20.10.03, 21.10.03, 22.10.03, 23.10.03, 24.10.03, 27.10.03, 28,10.03, 29.10.03, 30.10.03, 31.10.03, 3.11.03, 12.12.03, 23.12.03
JUDGMENT DATE :	23 December 2003
JURISDICTION:	COMMON LAW - CRIMINAL
JUDGMENT OF :	Miles AJ
DECISION :	Sentence of nine years imprisonment commencing 28 October 2003 imposed to expire on 27 October 2012. Non-parole period of six years, 11 months to expire on 27 September 2010.
CATCHWORDS :	Sentencing - manslaughter - conviction after trial for murder - foster carer of young child - death by shaking and blow to head - extent of culpability and seriousness - whether sentence should exceed usual range - relevance of deterrence.
LEGISLATION CITED :	Crimes (Sentencing Procedure) Act 1999 Sentencing (State and Federal Law in Victoria (1999)
CASES CITED :	R v Woodland, (2001) NSWSC 416 R v Vaughan (1991) 56 A Crim R 355 R v Ditford (1992) NSWCCA 17.3.1992 R v Bilton (2000) NSWSC 923 R v Marshall (2003) NSWSC 23.5.2003 R v Vangelder (unreported) 1991 R v Monroe (2003) NSWSC 168
PARTIES :	REGINA v Linda WILSON
FILE NUMBER(S) :	**SC** 70071/02
COUNSEL :	Crown: J Kiely SC Accused: A Webb
SOLICITORS :	I v Knight - Crown Solicitor Carters Law Firm

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION
CRIMINAL LIST

MILES AJ

23 December 2003

70071/02

REGINA v Linda WILSON

SENTENCE

1 HIS HONOUR: On 7 October last, Linda Wilson pleaded not guilty to a single count of the murder of Jayden March at Sutherland on 22 May 2001. A trial proceeded.

2 On 3 November last, the jury returned a verdict of not guilty of murder but guilty of manslaughter. A conviction was recorded accordingly. The offender was remanded for sentence until 12 December 2003, and again until today.

3 The prosecution case was, essentially, that the offender, who was the foster mother of the deceased, had inflicted injuries upon him, with intent to cause grievous bodily harm, and that the child had died of those injuries.

4 By its verdict, the jury may be taken to have found that the deceased died of injury inflicted by the offender, that such injury was the result of an unlawful and dangerous act on the part of the offender, but that the prosecution had not proved the intent to cause grievous bodily harm.

5 The factual background to the case is as follows: The deceased was the child of Kelly Anne Luke, and of south coast aboriginal background, the exact nature of which I am not aware. He was born on 1 June 1999. His mother has four other children. Her husband, the father of Jayden and one of the other children, died on 15 October 1999. The mother was not in a position to look after them, and she approached the Department of Community Services (DOCS).

6 The offender and her husband, Anthony Wilson, had also been in touch with DOCS, with a view to being approved as foster parents. They had received approval of some sort, and had attended a number of training sessions with DOCS when the fostering of Jayden and his siblings arose as a matter of urgency. So, Jayden and his three year old sister came into the care of the offender and her husband on 9 March 2001.

7 The husband was in full-time employment, so that the offender was the primary carer of both children. She was at that stage thirty years of age.

8 The care of Jayden was not an easy matter. On several occasions the offender took the child to a doctor, and to the Sutherland Hospital, and presented him with a history of diarrhoea and vomiting. This was something of a puzzle to the doctors, who could not find anything wrong with him, other than, on one occasion, on 1 March 2001, when he was dehydrated.

9 The child was to have regular visits to his mother, but these did not always happen. The last was on Thursday, 17 May 2001. After the visit, the child appeared somewhat unsettled, with a recurrence of the previous symptoms of diarrhoea or vomiting.

10 Against that background, I turn to the evidence before the jury. According to the evidence given in the prosecution case by the offender's husband, the child was not well over the weekend of 19 and 20 May 2001. On the Monday, the husband arrived home at approximately 5pm, and saw the child sitting slumped on the lounge. The offender told him that the child had been like that for some fifteen minutes.

11 The husband attempted to stand the child upright, but the child was unable to do so. He was placed on the floor, and then vomited twice. The husband went to take him to the bathroom, but the child unexpectedly jumped up and walked to the bathroom, without assistance, having apparently recovered from whatever had been disturbing him previously. The husband bathed the child, and there were no bruises evident on the child at that stage.

12 The husband's evidence continued. In the early hours of the morning of 22 May 2001, the child was unsettled and the husband got out of bed to attend to him. He took the child into the lounge room and changed his nappy. For what he described as some unknown reason, he clipped the child over the back of the head twice with the palm of his hand. He changed the nappy a second time, and pushed on the stomach of the child with both of his hands, in his words "to get the shit out of him".

13 The husband demonstrated these movements in evidence and in interviews with the police. They were also described to medical practitioners, whose opinion was that they were of such moderation that they could not have caused, or contributed to, any of the injuries identified later on post-mortem examination.

14 The offender's husband went back to bed and to sleep. He later left the house at the usual time, shortly before 6am, noting that the child appeared to be asleep and normal, with "no problems".

15 What happened between then and about 9.55am has to be determined largely by inference from what can be established to have followed. At 9.55am, the husband received a telephone call at his work from the offender. She told him that Jayden was having trouble breathing, that she could not wake him, and that he had been like that for thirty minutes. The husband heard the child on the telephone as if with difficulty in breathing. He suggested that the child be taken immediately to the local doctor, in view of the difficulty they had had in the past at the hospital, where the doctors seemed unconvinced that there was anything wrong with the child at all.

16 The offender carried the child, and led his sister by the hand, to the surgery, arriving there some minutes later, just after 10am. The child appeared gravely ill to people in the waiting room and, after some minutes, was examined by Dr Tang, who tendered that death had already occurred. Dr Tang, nevertheless, applied CPR, unsuccessfully. An ambulance arrived and the child's death was confirmed. Dr Tang signed a death certificate that death had occurred at 10.30am.

17 A post-mortem examination was carried out by Dr Lawrence in the early hours of 23 May 2001. There were found to be four groups of apparent injury. The first group related to the scalp, the brain and the eyes. There were two bruises to the scalp, both considered to be recent, one on the right side, in the parietal area, and the other on the left temporal area. Dr Lawrence also found evidence of recent subdural haemorrhage, and recent haemorrhage to the retina and optic nerves of both eyes. Within the brain there was a small amount of bleeding. Significantly, the brain was swollen.

18 The second group of injuries was in the abdominal area, where there was a rupture of the stomach some thirty millimetres in length.

19 The third area of bruising was in the genital area and, in particular, bruising to the shaft of the penis.

20 Fourthly, there was evidence of older injuries, which could have occurred as much as weeks previously. They included a healing abrasion to the left nostril and other subdural and retinal haemorrhages.

21 The offender did not give evidence. She told police that she had arisen in the morning at about 7.30am. Jayden was playing and appeared normal, until after his bath, at about 8.30. She said she put Jayden on the bed, after she had bathed him, and was starting to dry him when she heard the little girl in the lounge room playing with the television set. She put Jayden on the floor and went out to attend to the other child. She said she was away no longer than two minutes and, when she returned, Jayden was on his side, making a croaking noise, shaking his head and holding his head. She said that she started to panic and "was just like patting him", trying to wake him up, but he did not wake. She rang her husband.

22 There was independent evidence of three telephone calls made from the offender's mobile telephone between 8.26am and 9.55am, and there was no reason for the jury to reject it. It is sufficient to say that the effect of that evidence is that the conduct of the offender, with regard to the telephone calls, is inconsistent with that of a person concerned about a child whom she had severely injured, whether by striking the head, stomach or genital area, or otherwise.

23 There was a great deal of medical evidence. Suffice it to say that, in my view, and, as I see it, the view of the jury, it established that the injuries to the head were likely to have been caused by impact and shaking, and that the impact or the shaking or both caused the swelling of the brain, which led to asphyxia and death. Whatever injury caused the swelling of the brain, it was likely to have been occasioned about thirty minutes prior to death.

24 The medical evidence also established that the other injuries to the head and body were inflicted on the deceased probably one to two hours before the death, possibly earlier than that. The older injuries did not contribute to the death of the deceased.

25 I deal now with the jury verdict. In finding that the prosecution had not proved that the offender acted with intent to cause grievous bodily harm, I think that the jury must have rejected the hypothesis in the prosecution case that it was the offender, and the offender alone, who inflicted all the injuries that were received by the deceased on the morning of 22 May 2001. It was open to the jury to find that the final causative factor was the shaking of the child, and that that shaking had occurred after the telephone conversation, which concluded at about 9.10am. It was open to the jury to find that that shaking was the unlawful and dangerous act on the part of the offender, which constituted the crime of manslaughter, for which she was convicted. I think that it is unlikely that the jury would have found her guilty of manslaughter and not guilty of murder, if they had found that she had inflicted all the injuries which the child had received that morning.

26 In my view, there is a reasonable possibility, and it was open to the jury to find that there was such a reasonable possibility, that the force used by the husband was greater than he demonstrated when he gave evidence, and that it was he who inflicted the impact injury to the head, and the injury to the abdomen.

27 The question of the bruising to the genital area remains just that, an unresolved question. It may have been that the bruising had not shown at the time the offender bathed the child at about 8.30, assuming that that is what she did.

28 Furthermore, in his interviews with the police, the husband exhibited greater irritability and frustration with the child than he did in the witness box, and his demonstration of the movement whereby he struck the child twice on the head indicated that that striking was more forceful than what he demonstrated in his evidence. It may be more than just a coincidence that the striking to the head, and the pressure on the child's stomach, which he described and demonstrated, are generally, though not necessarily particularly, in areas where significant injury was received.

29 I reject the suggestion that it was possible, and that the jury may have considered, that some

of the injuries were inflicted by the child's sister. Nevertheless, I repeat, as the jury found, the fatal shaking of the child on the part of the offender constitutes the crime of manslaughter, for which she has been convicted.

30 There being in the trial no suggestion of ill-treatment of the child on the part of the offender, it is likely that the jury considered that she shook the child in sudden frustration and irritability, in a mood similar to that of her husband when he assaulted the child in the early hours of the day. Subject to some remarks I will make in a minute, I come to the same conclusion.

31 It follows that I do not accept the submission on behalf of the prosecution that the act which caused the death of the child was one of several violent acts perpetrated by the offender on the child. It follows also that I do not accept, as was submitted, that the acts perpetrated on the child by the offender demonstrate deliberate cruelty on her part.

32 I accept that there is no explanation for the injuries to the genital area, but, if this is to be relied upon as an aggravating factor, being, as submitted, a wanton and sadistic disregard for the privacy and well-being of the child on the part of the offender, I am not convinced that it is made out.

33 Another aggravating factor relied upon by the prosecution was that from the statement of the offender to her husband on the telephone, and I think also an indication to the people in the doctor's waiting room that "he's been like that for half an hour", there should be a conclusion that the offender delayed seeking medical attention. The statement that the child had been in that condition for some time, however, is also consistent with the appearance of something wrong with the child, which led to the frustrated action of shaking the child shortly before 9.55am.

34 As I have said, it is established independently, on the telephone records, that the offender was on the telephone to the Lismore Hospital, where a grandparent had been admitted, for two minutes at 9.22am. It is unlikely that there was anything apparently wrong with the child at that stage. I do not find established any culpable delay on the part of the offender in seeking attention for the child.

35 I accept the prosecution's submission that the following factors are relevant in determining the sentence to be imposed: The offender, as a mother who had care of children in the past, would have known of the danger and seriousness of her actions to a child of two years of age. The deceased was extremely vulnerable, due to his age, size and lack of ability to communicate with other people who may have been in a position to assist him. The offender was thirty years old and not entitled to leniency as a result of youth or inexperience. The offender voluntarily took on the role as foster carer, and was in a position of trust and authority. The deceased, or more precisely the mother of the deceased, and the community, through DOCS, relied on the offender for his care and well-being, and that trust was abused. The death of the deceased was painful, with the child surviving for some time after the initial stomach and penile injuries. However, as I have said, I am not convinced that it was necessarily the offender who inflicted those injuries. The offender has shown no contrition or remorse.

36 Matters of aggravation and mitigation now need to be treated in the context of the provision of the **Crimes (Sentencing Procedure) Act** 1999 (the Act), which apply to the determination of any sentence after 1 February 2003, for offences, whenever committed, unless the offender has been convicted, or entered a plea, prior to that date.

37 Section 3A of the Act sets out, in an exhaustive manner, the purposes for which a court may impose a sentence for an offender. It would seem that no purpose other than those set out is legitimate. They are set out in paragraphs (a) to (f) of that section, and may be taken to be incorporated in these reasons.

38 The purposes, as stated, vary somewhat from many of the classical statements for the purpose of sentencing, which it is not necessary to repeat and discuss. However, it may be worth saying that the recognition of the harm done to the victim of the crime and the community has not ordinarily been regarded as one of the conventional purposes.

39 I think that was recognised in a decision of the Court of Criminal Appeal in the Attorney-General's application under section 37 of the **Crimes (Sentencing Procedure) Act** 1999. However, there being no victim impact statement in the present case, the Court can do little in this regard but mark the tragic loss of Jayden to his mother and the members of his extended family.

40 Aggravating, mitigating and other objective or subjective factors that affect the relative seriousness of the offence are now to be taken into account in accordance with section 21A of the Act. A list of aggravating and mitigating factors in that section is not exhaustive, and the presence of any such factors does not require the Court to increase or reduce the sentence for the offence.

41 The prosecution points to the following aggravating factors: 21A(2)(b) actual use of violence. The offence involved significant violence, as already referred to. 21A(2)(g) injury, emotional harm, loss or damage caused by the offence. The offence resulted in the death of a child. 21A(2)(k) the offender abused a position of trust or authority in relation to the victim. The deceased was in the care of the offender as a foster carer. 21A(2)(l) the victim was vulnerable. The deceased was very young, reliant on the offender, and unable to fully communicate with other persons.

42 The prosecution concedes that the following factors are mitigating under section 21A: 21A (3)(w) the offence was not a matter of a planned or organised criminal activity. 21A(3)(e) the offender does not have any record of previous convictions. 21A(3)(f) the offender was a person of previous good character.

43 I go on to remark generally, with regard to mitigation and aggravation, it is true that the offender had, of her own volition, been placed in a position of trust and responsibility as a foster carer. That placing arose in an emergency situation. Neither the offender, nor her husband, asked for any special treatment, or priority. This is not a case of a predator, who deliberately sought out to hoodwink the authorities, so that she could have a child placed in her care for her to exploit. Rather, as the evidence of Dr Giuffrida this morning reinforces, I think that she, and her husband, contrary to her hopes and expectations, were unable to cope, in a situation for which she was insufficiently trained, and temporally and personally unsuited.

44 It is true that, with the arrogance of hindsight, the offender's personal history, now more or less fully disclosed, shows that she was unsuited to the task of foster carer and that, sooner or later, she would have been demonstrably unable to cope with her responsibilities. However, any such incapacity was not demonstrated to the DOCS officers, or to the several doctors whom she consulted, complaining not of problems, or potential problems, on her part, but with regard to what appeared to be the child's illness.

45 The offender's history and background is covered in a pre-sentence report, the evidence of her mother and grandmother, and the report and evidence of Dr Giuffrida, forensic psychiatrist.

46 The offender was born on the Central Coast of New South Wales on 13 October 1970. She has had a troubled life. Her parents separated when she was twelve years old, and she went with her brother and sister to live with her mother. She was much closer to her father, however, and she returned to him after a year or so.

47 He remarried. She did not get on with her father's new wife, and a daughter. At the age of about fourteen she went to live separately in a caravan park. She went out to work at age fifteen, and apparently supported herself.

48 At the same age, she married. She and her then husband lived together continuously for about eleven years. They had three children. She told the probation and parole officer, as she complained to her grandmother, that her then husband was violent to her during that period. She left him and went to Tweed Heads with the children. There it happened that she met Mr Anthony Wilson. She moved away, again with the children, this time to Canberra. The then husband followed her, and joined her and the children. She moved back to Tweed Heads, without the children, resumed, or continued, her relationship with Mr Wilson, and married him in 1998.

49 In the meantime, her former husband, who, according to all the evidence, was a proper father, whatever his shortcomings may have been as a husband, remained in Canberra with the children. It seems that she and her grandparents visited the children there from time to time, until about 1999.

50 There was an occasion in that year when the former husband failed to keep an appointment and, after that, the offender lost contact with him and with the children, and neither she, nor her grandparents, know their whereabouts. She lost contact also with her own siblings and, for some years, with her mother, although that has been re-established.

51 In about 1997 the offender had a hysterectomy, which she attributes to being kicked by her then husband. Since she left him, she has been employed most of the time, until the foster caring of Jayden, and that was mostly in the semi-caring role of an assistant in a nursing home, or similar institution. Some, indeed, of the work she has done has been on a voluntary basis.

52 It is more than likely that the fostering role she adopted in 2001 was a matter of great emotional importance for her. One of the witnesses spoke of her referring to the foster children as having been adopted by her.

53 She kept a diary, the first page of which is headed "First foster kids". It purports to record, in detail, matters relating to the foster children and, particularly, with regard to their visits to their natural mother, whom she refers to repeatedly as "mum".

54 The diary also purports to set out her account of what happened on the morning of Jayden's death, which is consistent with the account she gave to the police. It contains an obvious alteration at the time of the bathing of the child. It is difficult to know what importance to put on this. She is obviously a very complicated person.

55 According to the pre-sentence report, she attributes the injuries sustained by Jayden to her husband, and also suggested that the child may have sustained injuries before coming into her care. The latter is, as I have already indicated, consistent with the medical evidence that there is no basis for concluding that any of the old injuries contributed to the death.

56 The offender was interviewed on 9 December 2003 by Dr Giuffrida. He had access to documentary material, some of which is not before the Court. It included records from the Sutherland Hospital and from Dr George Foster, a psychiatrist, covering the period from June 2001 to September last, just before the start of the trial. Episodes during that period include a limited separation from her husband, panic disorder, regressive behaviour, and an admission to hospital, following massively excessive ingestion of antidepressant and other medication.

57 Dr Foster saw her, indeed, twenty-eight times. She gave him what appears to be an

exaggerated history of multiple rapes and sexual abuse during her childhood and since, and of other abuse on the part of family members and other people.

58 Dr Giuffrida concluded that, at the time of leaving her former husband and her three children, she suffered significant depression, with suicidal ideation, against a background of emotional and physical domestic abuse. The hysterectomy, and apparent failure to cope with the raising of her present husband's son, who had to be placed in foster care, exacerbated a feeling of personal failure, which she sought to make good by the fostering of Jayden and his sister. When that also failed to give her the satisfaction she craved, her frustration and rage resulted in the injury and death of the child.

59 I should add that Dr Giuffrida was of the view that the offender's present condition is in the nature of borderline personality disorder and, indeed, was so extreme, even at the time she had the care of Jayden, that she subjected him to much, if not the whole, of the time he was in her care to repeated assaults, and that she presented him, on all those occasions to the doctors and to the hospital, as part of Munchausen's by proxy syndrome; that is to say, when it was she who was ill and not the child.

60 On that aspect, I must say, first, that the evidence was given when Dr Giuffrida was called in the offender's case on sentencing, and it did not form part of the case which the offender had to meet. Perhaps, more importantly, it does not, in my view, fit the evidence of Anthony Wilson that the child was repeatedly ill over the period in question.

61 Since her incarceration following the trial, the offender's condition has deteriorated. She is able to receive medication which helps the condition, but she cannot receive the long-term intensive therapy which is needed. Her condition is not likely to be helped by the fact that she is kept in segregation, with no contact at all with other prisoners, and that situation is likely to continue.

62 It is almost a cliche in sentencing for manslaughter to have to say that the varying degrees of criminality inherent in that offence and, accordingly, the range of penalties and sentences imposed for the offence, are wider than for any other offence.

63 Cases of manslaughter involving an unlawful and dangerous act on the part of an angry or frustrated parent, who might otherwise be responsible and law-abiding, are in a more limited category. They are, unfortunately, not so rare. A survey of recent sentences in such matters in this State was conducted by Wood CJ at CL in **Woodland** (2001), and I incorporate into these remarks what his Honour said at paragraphs 27 to 30 of that judgment.

64 I propose to exercise the caution which his Honour said needs to be exercised in seeking guidance from other cases, but I adopt the general remarks of Lee J, who was also a Chief Judge of Common Law at the time, ten years earlier, when he said:

> "It must be recorded that the parents of children have an obligation to their children, when they are little, to take care of them and not to ignore them, and the Courts, whilst recognising that frustration and anger can often arise in a parent because of the child crying or engaging in otherwise normal conduct for a child, cannot be seen to be encouraging violent, physical assaults on little children and, indeed, must seek to deter such action."

65 Nevertheless, whilst public perception is not to be ignored, that is not to overshadow the Court's fundamental role to do justice according to law. In that context, I take the law to include the sentencing practices that have been established in and by the Court itself.

66 The cases establish a range of sentences for the unlawful killing of very young children by parents or carers of between five years imprisonment on a plea of not guilty to murder but guilty of manslaughter and ten years imprisonment. The cases are **Vaughan** (1991) and **Ditford** (1992). That range, I might say, is similar to what appears to be the range elsewhere in Australia, and I rely on Fox and Freiberg's work: **Sentencing (State and Federal) Law** in Victoria (1999), paragraphs 12.217 and following.

67 In my view, to impose a sentence of substantially more than ten years is so far beyond the range of sentences established by past sentencing practice that to do so is not the task of the sentencing Judge at first instance but of the Court of Criminal Appeal, if it is minded to do so.

68 The two cases, at the top and bottom of the range I have mentioned, are both decisions of the Court of Criminal Appeal. They involve late pleas of guilty. Although they were before the days of the Act and the guideline judgments, I approach them on the basis that sentences somewhat higher would have been approved by the Court of Criminal Appeal if there had not been a plea of guilty. I, therefore, take it that, where death results from an unlawful and dangerous act, such as that which I think the jury found to have been committed by the offender in the present case, and there has been a plea of not guilty, the range is from six to twelve years.

69 Of the cases surveyed by Wood CJ at CL, only two followed a plea of not guilty. In **Bilton** in 2000, Bell J imposed a sentence of seven years imprisonment, with a non parole period of four years and six months. The offender there, in a relationship with the child's mother, admitted that he lost control when the two year old child kept crying, and punched the child and then shook him, in what he described as a panic reaction, which the Judge also characterised as a misguided attempt to revive him.

70 In **Marshall** in 2003, Adams J imposed a sentence of six years, with a non parole period of three years and six months. Again, that was a case of impact injury to the head, followed by shaking. The evidence was overwhelming, mainly contained in candid admissions to the police. Despite the plea, there was considerable remorse and a confident prediction that the offender would never do such a thing to a child again. A utilitarian discount of twenty per cent was applied, presumably for the admissions to the police. His Honour was not satisfied that the offender inflicted violence more serious than the shaking.

71 I mention two cases not in the survey conducted by Wood CJ at CL. There is **Vangelder** (unreported) in 1991 and **Monroe**, a decision of O'Keefe J this year, where his Honour also undertakes a comprehensive outline of the authorities. Both were cases of conviction after pleas of not guilty, and both involved fatal shaking injury.

72 In **Vangelder** an effective sentence of five years was upheld as not excessive. A mitigating factor was the appellant's low intelligence and lack of appreciation of the risk of shaking, a factor not present in the matter before me.

73 In **Monroe** there was a sentence of seven and a half years, with a non parole period of four years, but, again, the offender displayed considerable remorse, despite the plea of not guilty.

74 Mr Kiely, Senior Counsel for the prosecution, submitted that, because no previous case appears to have come to light where a foster parent or carer has been found guilty of manslaughter, this case deserves special consideration. I accept that submission.

75 I accept, also, that it is almost inevitably the weakest and most disadvantaged children that are the very ones most likely to be placed in care. To the extent that it is possible, the Courts should do all in their power to protect those children from abuse, and to avoid the tragic consequences that may occur.

76 I doubt whether that is achieved by making heavy sentences heavier. The effect might, indeed, be not so much to deter foster carers otherwise in situations of weakness or frustration from abusing the trust placed in them, but to deter men and women from accepting the responsibilities of foster parenting for fear of failing in their onerous duties.

77 There is no sudden outbreak of, or tendency towards, child abuse on the part of foster carers so far as I am aware. There is, therefore, no need to impose a sentence so heavy that it is out of the ordinary range.

78 However, as I have said, the offender continues to deny responsibility for the child's death, and there is, otherwise, no evidence of remorse. The apparent lack of remorse needs to be assessed in the light of the psychiatric evidence to which I have already referred. It may be, and I put it no higher than that, that the offender is in a state of denial, unable perhaps to admit to herself the enormity of what she has done; more certainly, I think, to cope with the emotional consequences.

79 I take into account the rigorous conditions of imprisonment in which the sentence will be administered. I am aware that the experience will be a harsher one than for a prisoner in a less strict custodial environment, and that the offender's psychiatric condition may well continue to deteriorate in such conditions. However, the prognosis is not sufficiently clear for me to hold that there are special circumstances justifying the reduction of the non parole period in the belief that that might affect some beneficial change in the offender's condition and conduct. She had spent a total of six weeks and three days to 12 December 2003 in custody, pending trial and sentence. I take that into account, by backdating the sentence to 28 October 2003.

80 **Linda Wilson**, you are sentenced to imprisonment for a period of nine years, commencing on 28 October 2003, expiring on 27 October 2012.

81 I fix a non parole period of six years and eleven months, commencing on 28 October 2003 and expiring on 27 September 2010.

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