R. v. Eeyeevadluk, 2017 NWTSC 66

 S-1-CR2016000007

 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

 IN THE MATTER OF:

 HER MAJESTY THE QUEEN

 - vs. -

 KARMA EEYEEVADLUK

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 Transcript of the Reasons for Sentence by The Honourable

 Justice S. H. Smallwood, at Yellowknife in the Northwest

 Territories, on June 15th A.D., 2017.

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 APPEARANCES:

 Ms. J. Andrews: Counsel for the Crown

 Mr. R. Clements, agent

 for Mr. S. Fix: Counsel for the Accused

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 Charge under s. 344(1)(b) Criminal Code

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 1 THE COURT: Karma Eeyeevadluk was

 2 convicted on February 9th, 2017, following a

 3 jury trial, of the offence of robbery,

 4 contrary to section 344(1)(b) of the Criminal

 5 Code. The offence arose from an incident

 6 where Ms. Eeyeevadluk and two other

 7 individuals were involved in an assault and

 8 robbery of a taxi driver here in Yellowknife.

 9 Counsel are far apart in their sentencing

 10 submissions: The Crown is seeking a sentence

 11 of four years imprisonment less credit for

 12 remand time. Ms. Eeyeevadluk's counsel says

 13 an appropriate sentence is six to nine months

 14 incarceration less credit for remand time. My

 15 task is to impose an appropriate sentence for

 16 this crime.

 17 The facts of the offence arise from the

 18 evidence led by the Crown at the trial as no

 19 defence evidence was presented.

 20 On February 25th, 2015, Ms. Eeyeevadluk,

 21 Bradley King and Denecho King, who are

 22 brothers, were passengers in an Aurora taxicab

 23 being driven by Matar Mahamud. Bradley King

 24 was in the front passenger seat, Denecho King

 25 and Ms. Eeyeevadluk were in the backseat of

 26 the taxi.

 27 Mr. Mahamud picked up the passengers in

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 1 N'dilo between 10 and 11 p.m. that night. Mr.

 2 Mahamud recognized Ms. Eeyeevadluk from having

 3 picked her up on previous occasions. When he

 4 picked them up, one of them showed him $10 and

 5 he asked them where they were going. They

 6 first said Sissons Court, then Fort Gary

 7 Apartments. He took the $10 and put it in his

 8 front left pocket of his shirt and began

 9 driving downtown.

 10 After they reached the area around Weaver

 11 and Devore, they asked the taxi driver to stop

 12 and go back to N'dilo. Mr. Mahamud asked them

 13 why and they said they were looking for

 14 friends. He told them at that point that they

 15 would not have enough money and he said they

 16 said to drop them off when the fare reached

 17 $10.

 18 So Mr. Mahamud drove back through Old Town

 19 and when the fare reached $10, which was just

 20 near Otto Drive, he told them that the money

 21 was spent. They said "okay, then stop and we

 22 will get out". Mr. Mahamud stopped and parked

 23 the vehicle.

 24 When Mr. Mahamud stopped the vehicle on

 25 Otto Drive, Denecho King grabbed him around

 26 the neck and held his right arm around his

 27 neck. Bradley King began punching Mr. Mahamud

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 1 saying "put the money down", "put the money

 2 down". Mr. Mahamud tried to push the

 3 emergency button by the steering wheel which

 4 would alert his dispatcher to a problem.

 5 Karma Eeyeevadluk got out of the vehicle

 6 and opened the driver's door and grabbed his

 7 left hand and stopped him from pressing the

 8 button. He was unable to defend himself. Ms.

 9 Eeyeevadluk then took money from his front

 10 left pocket of his shirt. Mr. Mahamud thought

 11 he had around $50 in cash in the pocket, which

 12 had been the fares that he had earned that

 13 night. He was able to use his knees to press

 14 the horn and Ms. Eeyeevadluk said to the males

 15 "guys, just run away". They all then fled on

 16 foot.

 17 Mr. Mahamud related that he had lost

 18 consciousness when he was being choked and

 19 punched, that he was unable to breathe and

 20 that he was bleeding, that when he regained

 21 consciousness was when Ms. Eeyeevadluk had

 22 come to the door, opened it, and grabbed his

 23 hand. He said that he was still feeling dizzy

 24 but that he knew that she had taken the money.

 25 Bradley King pled guilty to assault

 26 causing bodily harm on Matar Mahamud arising

 27 from this incident. Denecho King pled guilty

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 1 to assault causing bodily harm also. I am

 2 advised by defence counsel that they received

 3 sentences of one year and four months

 4 imprisonment.

 5 Mr. Mahamud completed a Victim Impact

 6 Statement. It was completed for the

 7 sentencing of Bradley and Denecho King but it

 8 describes his feelings during this incident.

 9 It is clear that the offence had a

 10 significant impact upon him and that is clear

 11 not only from the Victim Impact Statement but

 12 also from his testimony during the trial where

 13 he described the injuries that he suffered as

 14 well as the effects of the offence on him.

 15 He suffered physical injuries. He lost a

 16 tooth, and he has had trouble sleeping. He

 17 was off work for a period of time and when he

 18 returned to driving a taxi, he can no longer

 19 drive at night as he does not feel safe

 20 anymore. The result is that he is not able to

 21 work the same amount of hours which means that

 22 he makes less money and, as he sends money to

 23 his family, that means that he has less money

 24 to send to them. In his Victim Impact

 25 Statement, he says that he is considering to

 26 move somewhere else so that he can start over

 27 and feel safe again.

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 1 Ms. Eeyeevadluk has a criminal record,

 2 which starts in 2014 and in Youth Court and

 3 continues to earlier this year, in March of

 4 2017. She has 12 convictions. Most of the

 5 convictions were entered after this offence

 6 occurred.

 7 So on February 15th, 2015, the date of

 8 this offence that I am sentencing her for

 9 today, at that point Ms. Eeyeevadluk had three

 10 convictions on her record. All of them had

 11 been entered in Youth Court and they were two

 12 assaults and one failing to attend court.

 13 Since this offence has occurred, she has

 14 had convictions for break and enter, two

 15 convictions for theft under $5000, five

 16 convictions for failing to comply with an

 17 undertaking or a recognizance, and one offence

 18 of failing to comply with probation.

 19 The fundamental purpose of sentencing,

 20 according to section 718 of the Criminal Code,

 21 is to protect society and to contribute to

 22 respect for the law and the maintenance of a

 23 just, peaceful and safe society by imposing

 24 just sanctions.

 25 The objectives of the sanctions include to

 26 denounce unlawful conduct, to deter the

 27 offender from committing other offences, to

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 1 separate offenders from society where

 2 necessary, to assist in rehabilitating

 3 offenders, and to provide reparations for harm

 4 done to victims and to promote a sense of

 5 responsibility in offenders.

 6 It is also important that the sentence is

 7 proportionate to the gravity of the offence

 8 and the degree of responsibility of the

 9 offender.

 10 I am also required to consider the

 11 sentencing principles in section 718.2. There

 12 are a number of them and I will not refer to

 13 them all, but in particular section 718.2(e)

 14 is relevant to Ms. Eeyeevadluk as she is an

 15 Aboriginal offender.

 16 I have heard from her counsel regarding

 17 the background circumstances of Ms.

 18 Eeyeevadluk's life.

 19 She is 20 years old and was 18 years old

 20 at the time of this offence. She has a son

 21 who is four years old, and she is anxious for

 22 when she can be out of custody and to be with

 23 him.

 24 Ms. Eeyeevadluk's mother is a residential

 25 school survivor. Ms. Eeyeevadluk was born in

 26 Iqaluit and lived with her mother until she

 27 was apprehended and put in foster care. She

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 1 was in foster care until she was discharged at

 2 19 while she was in custody at the North Slave

 3 Correctional Centre.

 4 While living with her mother, her mother

 5 abused alcohol and Ms. Eeyeevadluk had to see

 6 her mother abuse alcohol and to be beaten up.

 7 Her years with her mother were chaotic. They

 8 were marked by her mother's alcohol abuse and

 9 abandonment, once leaving her in a room alone

 10 with the door tied closed while her mother

 11 went out drinking. While she was in foster

 12 care, she was the victim of sexual abuse. She

 13 was homeless at the age of 13 and began to

 14 drink and do drugs. She began a relationship

 15 with a man at 14 and had her son when she was

 16 15. The relationship with this man was

 17 abusive, physically and emotionally, and

 18 ultimately she was able to end it when she was

 19 abused by him in public.

 20 When she was pregnant, Ms. Eeyeevadluk

 21 returned to school and completed her Grade 11.

 22 In my view, when you look at Ms.

 23 Eeyeevadluk's background, there are

 24 significant Gladue factors that need to be

 25 considered.

 26 I have reviewed the cases that have been

 27 provided by counsel. I do not intend to refer

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 1 to them in detail but I have reviewed them and

 2 they were helpful in coming to the sentence.

 3 Robbery is a serious offence. The maximum

 4 punishment is life. So it is one of the few

 5 offences that Parliament has decided that life

 6 imprisonment is available. There is no

 7 minimum sentence for this offence, which means

 8 that the range of sentences available for

 9 robbery are broad.

 10 Deterrence also has to be a significant

 11 sentencing objective and that is reflected in

 12 the case law that has been provided.

 13 The case law in this jurisdiction has

 14 established that robbery of vulnerable

 15 persons, like taxi drivers, attracts a severe

 16 penalty. The sentences are often considered

 17 in the number of years.

 18 The sentence in R. v. Rolfe, 2007 NWTSC

 19 05, was one of four years imprisonment less

 20 credit for the remand time. In R. v.

 21 Qitsualik & Michael 2012 NWTSC 73, the

 22 sentences imposed were 30 months and a week

 23 and 26 months and a week.

 24 Of course there are degrees of robbery.

 25 Some are very serious and violent, others are

 26 less so. Some involve the use of a weapon,

 27 others don't, and the circumstances of each

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 1 robbery will vary and the role of each person

 2 involved also must be considered.

 3 I have to consider the principle of parity

 4 as well. Bradley and Denecho King each pled

 5 guilty to an assault causing bodily harm, so a

 6 different offence, and also received sentences

 7 of 12 months and four months imprisonment.

 8 Looking at the aggravating factors, this

 9 was a robbery on a taxi driver at night. Taxi

 10 drivers, along with other occupations like

 11 convenience store clerks, are vulnerable.

 12 They work alone, often at night, and are

 13 vulnerable to the clientele who they serve.

 14 They do not choose who enters their taxicab

 15 and each customer, they hope, simply wants a

 16 ride somewhere and is going to pay without a

 17 fuss.

 18 They also have to be always concerned that

 19 there are those who are more problematic.

 20 They deal with people who drunk, intoxicated,

 21 and those who don't have enough money, who are

 22 looking to get a ride for free, or more

 23 serious situations - people who might be

 24 violent or who want to take advantage of a

 25 vulnerable taxi driver by robbing them.

 26 Mr. Mahamud was vulnerable that night. He

 27 was driving a taxicab alone. There were three

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 1 passengers and the situation involved him

 2 being attacked by the two males. He was in a

 3 position that he could not defend himself or

 4 call for assistance.

 5 Looking at Ms. Eeyeevadluk's role, she did

 6 not instigate this incident and she did not

 7 join in the assault of Mr. Mahamud. There is

 8 no indication that this was a planned event;

 9 rather, it seems that one of the King brothers

 10 started this incident and the other brother

 11 joined in. So there was no planning and there

 12 was no weapon which was used in this incident.

 13 But Ms. Eeyeevadluk did not tell the King

 14 brothers to stop when they began this assault.

 15 She did not render assistance to Mr. Mahamud

 16 but instead she joined in the incident by

 17 opening the taxi driver's door, by preventing

 18 him from pressing the help button, and taking

 19 money from Mr. Mahamud's left front pocket.

 20 The incident, as I indicated, resulted in Mr.

 21 Mahamud suffering injuries and the effect on

 22 him has been long-lasting.

 23 Turning to the mitigating factors,

 24 Ms. Eeyeevadluk is a young person. At the

 25 time of offence, she had a minor youth

 26 criminal record. She is still only 20 years

 27 old and rehabilitation has to be a focus of

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 1 this sentence.

 2 Ms. Eeyeevadluk has expressed remorse for

 3 this offence. In her words to the Court last

 4 week, she spoke eloquently about her remorse

 5 and her regret for not calling the police and

 6 not doing more to help Mr. Mahamud, and I

 7 accept that she is sincerely remorseful for

 8 her actions.

 9 She also spoke of her desire to make

 10 changes, that she has had an opportunity to

 11 reflect on her life while she has been in

 12 custody. Ms. Eeyeevadluk has an opportunity

 13 to deal with the issues in her life, to be a

 14 mother to her child. And having been

 15 abandoned by her own mother and observed her

 16 own mother make bad decisions and abuse

 17 alcohol, I am sure that is not something you

 18 want for your own child, to have to see and

 19 experience the same things that your own

 20 mother put you through. So Ms. Eeyeevadluk,

 21 you have an opportunity to stop all of that,

 22 to return to school, to be a mother to your

 23 child, and that involves you making better

 24 choices and not hanging out with the wrong

 25 people.

 26 The Crown has sought a number of ancillary

 27 orders which I will deal with first.

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 1 This is a primary designated offence so

 2 there will be a DNA order so that

 3 Ms. Eeyeevadluk's DNA will be collected and

 4 stored in the DNA databank.

 5 There will be a firearms prohibition order

 6 pursuant to section 109. It will begin today

 7 and end ten years following Ms. Eeyeevadluk's

 8 release from imprisonment.

 9 There will be the victim of crime

 10 surcharge as prescribed.

 11 Ms. Eeyeevadluk has been in and out of

 12 custody since her arrest on February 26th,

 13 2015 for this offence. She has served other

 14 periods of imprisonment and some of the remand

 15 credit has been applied to other offences that

 16 she has been convicted of since February of

 17 2015. I am advised that the unused credit

 18 amounts to 166 days.

 19 So giving Ms. Eeyeevadluk credit at the

 20 rate of one and a half to one, that equates to

 21 248 days of remand credit for 8.25 months of

 22 pre-sentence custody.

 23 So please stand, Ms. Eeyeevadluk.

 24 Ms. Eeyeevadluk, taking into account your

 25 circumstances, including the Gladue factors,

 26 the circumstances of the offence and the

 27 applicable sentencing principles, I am

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 1 imposing a sentence of 20.25 months in

 2 imprisonment and giving you credit of 8.25

 3 months for pre-sentence custody, leaving a

 4 sentence of 12 months.

 5 You may be seated.

 6 Thank you, counsel. Is there anything

 7 else that we need to address?

 8 MS. ANDREWS: Not from the Crown, thank

 9 you.

 10 MR. CLEMENTS: No, thank you.

 11 THE COURT: All right, thank you, we

 12 will adjourn.

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 14

 15 Certified to be a true and

 accurate transcript pursuant

 16 to Rules 723 and 724 of the

 Supreme Court Rules,

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 22 Lois Hewitt,

 Court Reporter

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