**NAME: CHIKERE HOMACHIMENUM**

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**LECTURER(S): MR FABAMISE, MR FISAYO AND MISS VERA**

Question summary: This question borders on the principles and guidelines that the court considers in sentencing.

**Introduction**

The Criminal Justice System in Nigeria commences with the commission of a crime and continues with subsequent interventions by the law enforcement agencies of the system that has the power to arrest, arraignment, trial, sentencing and punishment of the offender. A criminal trial involves the state, the society and the offender who commits the act. The process of determining whether the accused or defendant did the act or committed the omission alleged against him or her, if he or she did, depends on sentencing him/her for his/her wrongdoing or did. In some legislation, the word sentence and judgment are used interchangeable. Criminal justice system in Nigeria, commences with the commission of a crime and continues with the subsequent intervention by the law enforcement agencies of the system that has the power to arraign, try and sentence and punish the offender accordingly.

In all criminal trials, where a conviction is secured, the next logical step would be sentencing. Sentencing is a very broad field accommodating different approaches and ideas. It is an exercise of a discretionary power that is little guided in a country such as Nigeria. Hence the power presents sentences with a very wide playing field and accommodates individual inclinations and approaches or solutions to the same problem.

The criminal justice system in Nigeria starts to run with the commission of a crime and continues with subsequent interventions by agencies of the system with the arrest, arraignment, trial, sentencing and punishment of the offender. A criminal trial involves two processes both of which are important to the society and the offender. Firstly, there is the process of determining whether the defendant/accused did the act or made the omission alleged against him; if he did, then the second leg is that of sentencing him for his wrongdoing. In some legislation, the words sentence and judgments are used as if they were synonymous.

A sentence of the court can be defined as a definite disposition order issued by a court or other competent tribunal against a person standing trial at the conclusion of a criminal trial. This is subsequent to the finding of guilt against him and must be an order which is definite in its nature, type and quantum. The Nigerian Criminal Code and the Penal Code as well as other offence-creating statutes specify the quantum of sentences, while the sentences themselves find their legitimacy in the criminal Procedure legislations applicable at the states and federal levels. Types of sentences include:

* Death sentence
* Imprisonment
* Caning
* Forfeiture
* Deportation
* Fines etc.

Sentencing in Nigeria is governed by federal and state legislations such as the Criminal Code Act, the Penal Code, the Criminal Procedure Act, the Criminal Procedure Code, the Criminal Procedure Laws of each state, Administration of Criminal Justice Act, Administration of Criminal Justice Laws and Children and Young Persons Act which goes to protect the right of young persons in Nigeria.

**DEFINITION OF TERMS**:

**Judgmen**t: Judgment is the final determination of a case by a court. Omissions and other inadvertent oversights in the course of proceedings can be cured at judgment stage, where the fate of the accused is determined.

**Conviction**: Black’s Law Dictionary defines conviction as the act or process of judicially finding someone guilty of a crime; the state of having been proved guilty.

**Sentencing**: this is the judicial determination of a legal sanction to be imposed on a person found guilty of an offence. It is the pronouncement by a court upon the accused person, after his conviction in criminal trial, imposing punishment to be inflicted. Sentencing also means the prescription of a particular punishment by a court to someone convicted of a crime. Thus after an accused person has been found guilty during trial or prosecution process, the court then enters judgment of conviction and thereafter comes sentencing. Sentencing can be defined as the judicial determination of a legal sanction to be imposed on a person found guilty of an offence’, (Landdian Sentencing Commission, 1987).

Sentence is also the pronouncement by the court or judge upon the defendant after his conviction in criminal prosecution, imposing the punishment to be inflicted, usually in the form of a fine, incarceration or probation. It is one of the several ways which together comprise what is often referred to as criminal justice system; although some might argue that it is an overstatement to categorize such disparate functions as a system.

**Punishment**: According to A.B. Danbazau, Punishment connotes pains, deprivation or suffering of person on whom punishment is administered

Sentencing of an accused person, who has been pronounced guilty and convicted, has to do with punishment imposed on him in view of the circumstances of the case. For some offences, maximum sentences are prescribed by law, but not the minimum. Judges are therefore at liberty to exercise their judicial discretion in sentencing the accused.

**PURPOSES AND RATIONALE OF SENTENCING**

Sentencing generally aims at the protection of the society through prevention of crime or reform of the offender which may be achieved by means of deterrence, elimination or rehabilitation of the offender. The justification is that imposing the penalty will reduce the future incidence of such offences by preventing the offender from carrying out the act or omission again or correcting the offender so that the criminal inclination is removed and by discouraging or educating other potential offenders. The purpose of sentencing is therefore to:

(a) To ensure that the offender is adequately punished for the offence,

(b) To prevent crime by deterring the offender and other persons from committing similar offences,

(c) To protect the community from the offender,

(d) To promote the rehabilitation of the offender,

(e) To make the offender accountable for his or her actions,

(f) To denounce the conduct of the offender,

(g) To recognize the harm done to the victim of the crime and to the community.

(h) To separate offenders from the society where necessary

**PRINCIPLES THAT GUIDE SENTENCING PRACTICE**

The Supreme Court in Mohammed v. Olawunmi held that “Once a Court of competent jurisdiction makes a finding of guilt on a criminal case or quasi-criminal matter, the conviction has to be made regardless of the interment of the sentence.” The sentence emanates from the discretion of the judge based on the facts of the case, the provisions of law and some other mitigating or aggravating factors. Thus the Supreme Court has laid down 6 basic principles or guidelines to aid courts in reaching a reasonable, just and fair sentence. A judge will consider several factors in determining a criminal sentence, including:

1. The nature of the offence
2. Character/nature of the offender
3. The position of the offender amongst his confederates
4. The rampancy of the offence
5. Statutory limitation
6. Concurrency of the sentence

**1. THE NATURE OF THE OFFENCE**

 Aggravating facts as mentioned earlier could either lead to the enhancement of the punishment or playing down of the mitigating factors in which case the offender will be deprived of the possibility of having a lighter sentence. Certain offences have been considered as serious in nature, for instance, offences such as armed robbery, arson, murder, kidnapping or sexual offences especially when they involve children as victims. In the American case of Gregge v Georgiath 428 US 153 the Supreme Court of America went on to uphold death penalty as an appropriate sentence for the offence of murder due to the nature of the offence. Also, in the Nigerian case of State v Osoelika and 7 Ors, a case of kidnapping and abduction at Enugu, the presiding Judge refused bail application due to prevalent and serious nature of kidnapping in Enugu and particularly South East zone of Nigeria, despite the fact that the said offence could be allow bail. Similarly, Courts have taken a very serious view of the offence of assault with intent to maim or disfigure. Thus, in R. V. Ozuloke (1965) NMLR 125 the Appellant met a little girl aged about eight years who was related to him on a village road. He covered her eyes with his hand and stuffed bread into her mouth to stop her crying out and took her into a bush, laid her on the ground, stood on her and poured acid over her body and cut off her left ear; he forced her eyes open and poured acid into them. He later ran away leaving the little girl unconscious. A twenty-year jail sentence was considered adequate, the offence being regarded as most revolting.

**Application**: In the case of Evans, he has been involved in series of kidnapping, armed robbery, assault, rape and defilement of young girls. These crimes are very serious crimes and serve as an aggravating factor for sentencing. Thus, leniency may not be shown in sentencing following the Supreme Court’s decision in Adeyeye and Ors v. The State

**2. THE CHARACTER/NATURE OR RECORD OF THE OFFENDER**

 As a principle of law and as a rule of evidence, character of the offender is inadmissible. However, when the character of the accused person is in question, the evidence of his character becomes admissible. In Adeyeye v. The state part of the reason advanced for the restatement of a heavier penalty given to the accused person was that he had been convicted of an earlier offence. It would appear that the court worked in the presumption that anyone with a previous conviction has lost out in terms of mitigating his sentence. In Adeleye v Ajibade the appellant’s bad character was significant in the restoration of a heavier punishment for him. In R v. State the appellant had previously been convicted for defilement. This led the court to increase the sentence from 18 months to 5 years imprisonment with hard labor. There are judicial authorities tending to suggest that our courts are reluctant in fully punishing offenders who are committing crimes for the first time. In Wilson V C.O.P the defendant uprooted an iron stake erected by the complainant on his land to block a footpath. On conviction, defendant was sentenced to prison contrary to section 81of the Criminal Code Act 82, for behaving in a manner likely to cause a breach of peace and was imprisoned without option of fine. On appeal, the High Court held that there is no appeal on sentence but to sentence an accused who is first offender to a term of imprisonment without option of fine for merely uprooting iron post on complainant`s land completely misconstrued the object of criminal punishment; sentence was accordingly varied to a fine of 10,000 naira or one month imprisonment.

**Application:** In this case, if Evans was a first time offender then a more lenient sentence would be given. However the court will not be willing to give smaller punishments due to the character and nature of the offender and the fact that he is a multiple offender and an unrepentant one at that even considering his attempt to escape.

**3. THE RAMPANCY OF THE OFFENCE**

Prevalent nature of the Offence in a Community Court usually takes into account the fact that the particular offence is prevalent in the community. While lack of prevalence of offence is a mitigating factor, the prevalence of it aggravates the punishment. Where an offence is prevalent, Courts have always thought that severity of sentences imposed will act as a deterrent and discourage others not to commit similar offence. The case which clearly underscored this principle of the law is that of State V Nwosu.In this case, husband and wife were sentenced to 7 years imprisonment each by Ado Ekiti State High Court for stealing a 7-month-old child because stealing of children was prevalent in that community at that material time. In another case of Owolabi v Queen the Supreme Court of Nigeria expressed its views thus: “Frauds on the customs are shockingly prevalent and the forgery of commercial documents strikes at the root of all credit. We are not disposed to reduce the sentence by one day”

Where an offence is rampant, the courts have always thought that the severity of the sentence imposed will help in stamping out the crime. In R v. Hassan and Owolabi the accused person was sentenced to 5 years imprisonment by the high court for forgery and another 5 years for stealing. They appealed and the Supreme Court expressed its view thus “fraud on the customs are shockingly prevalent and forgery of commercial documents strikes at the root of all credit. We are not disposed to reduce the sentence by one day.” It was also because in the court’s view in (State and 2 Ors), that robbery on the roads and water in recent times had been on the increase and also disturbing that two of the parties to the robbery were sentenced to twenty years imprisonment.

**Application**: In this case the crimes perpetuated by Evans are rampant (kidnapping, armed robbery, rape, defilement, ritual killing, and extortion and obtaining property by false pretense). Therefore the court might give a severe punishment in an attempt to stamp out the crime or serve as a deterrence.

**4. THE POSITION OF THE OFFENDER AMONGST HIS CONFEDERATES**

***When the offender plays a minor role***

In the case of Enahoro v. The Queen, a case of treasonable felony. Enahoro was sentenced to 15 years imprisonment by the high court. The Supreme Court reduced the sentence to 5 years and said “the sentence imposed on a lieutenant should never be more than the leader. The leader of a gang should be punished more severely than the lieutenant. This is to affirm that those who instigate, should get a higher punishment than those instigated.” In that case, the late Awolowo the leader, got a 10 year sentence so, the followers should not get more than 10 years imprisonment.

***Playing a major role:***

The offender who has played a major role in the commission of a crime is usually inflicted with more punishment than a minor participant. The above idea was given judicial recognition in Queen V Mohammed and Ors. While the first appellant who was the leader was given a maximum sentence of 8 years imprisonment, the other appellants were given a maximum sentence of 5 years imprisonment. In State v. Kerenku although the appellant was found not to be the leader, the court was however of the view that he played a leading role in the incident and must take that into consideration

**Application**: In this case, Evans has been identified as a notorious kidnap kingpin and armed robber. Therefore it may be concluded that he has played a major and significant role in the crimes. Playing a major role aggravates the punishment one is to be given and therefore he might get a more severe punishment for this.

**5. STATUTORY LIMITATION**

Statutes of limitation refers to laws which guide or prevent prosecutors from charging a person for a crime that was committed a certain number of years ago. The purpose or rationale for this is to make sure convictions are made upon evidence that have not deteriorated over time. After the expiration of the time stated in the statute, the criminal is essentially free.

Also, where the statute has stipulated a maximum term of imprisonment, the court shall not exceed the statutory limit. However, not all crimes are governed by statutory limitation. Murder for example in some states has no statutory limitation. In essence, whenever a statute itself stipulates the term of imprisonment, no court should exceed the statutory limit. In Queen v. Eyo and Ors a case of unlawful assembly, the High Court sentenced them to 5 years imprisonment. On appeal to the Supreme Court, the sentence was reduced to 3 years because that was the maximum sentence stipulated by law for unlawful assembly. Also in Aremu v. IGP, the Supreme Court held that it could not impose a higher sentence than what was stipulated by law.

**Application:** In Evans case, the court will have to give a sentence that does not exceed the maximum sentence or punishment stipulated by law for the offence. For example Section 1 of the Robbery and Firearms (Special Provisions) Act provides that any person who commits the offence of robbery shall upon conviction be sentenced to imprisonment for not less than 21 years. Therefore such provisions should serve as a guide in sentencing in Evans’ case

**6. CONCURRENT AND CONSECUTIVE SENTENCES**

Concurrent sentence can be defined as when the convicted person can serve all sentences at the same time while consecutive sentence can be defined as when a convicted person has to finish serving one sentence for one offence before they start serving the sentence for any other offence.

There are laws governing concurrent and consecutive sentences. When a person is charged and found guilty of more than 2 offences in Nigeria, the general rule is that whenever a court finds an accused person guilty of more than one offence, the sentences should run concurrently. The Supreme Court held this position by saying “whenever the sentences are similar or of similar nature or disposition they should run concurrently,” In Nwafor v. The State where the accused person was found guilty and sentenced for store breaking and possession of break-in in implements in the same transaction. The Supreme Court held that the sentence should run concurrently since they emanated from the same transaction.

**Application:** In this case, Evans has committed multiple offences and has been found guilty on grounds of various offences. It is at the discretion of the judge that he serves this sentences concurrently or consecutively. However, in following precedent, he may serve his sentences concurrently, following the ruling in the case above (Nwafor v. The State)

**CONCLUSION:**

In conclusion Criminal prosecution aims at the conviction of the accused or the defendant. The conviction goes with sentencing to some form of punishment or sanctions pronounced by the trial court. Such sanctions could take any or a combination of many forms like prison, caution, fine, caning, haadi lashing, corporal or capital punishment, banishment, forfeiture etc. Sentencing of an accused person, who has been pronounced guilty and convicted, has to do with punishment imposed on him in view of the circumstances of the case. For some offences, maximum sentences are prescribed by law, but not the minimum. Judges are therefore at liberty to exercise their judicial discretion in sentencing the accused. In essence, the judges have some guidelines or principles to be followed in determining sentencing.

Therefore, in the case of Evans, the 6 principles above will be applied in determining his sentence for the crimes which he has been found guilty of including kidnapping, armed robbery, rape, defilement, obtaining property under false pretense etc. In conclusion of the results from each of the principles or guidelines will either serve as a mitigating or aggravating factor in determining Evans’ sentence(s).