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**ASSIGNMENT.**

Evans, a notorious kidnap kingpin and armed robber, who has also been involved in series of assault, rape and defilement of young girls has finally been apprehended by the police. He was arrested at the Seme border, dressed like a woman and attempting to cross the border to Benin Republic. Investigations into his activities was concluded by the police and he was brought to the High Court where you are the Presiding Judge. After a long trail, you have found Evans guilty of all the charges brought against him including kidnapping, armed robbery, rape, defilement, ritual killing, extortion and obtaining property by false pretence. Having found him guilty of these charges, your next assignment is to sentence him accordingly. What are the things that will guide you in sentencing Evans having regard to the guidelines laid down by the Supreme Court.

**Introduction.**

 The Criminal justice system in Nigeria commences with the commission of a crime and continues with subsequent intervention by the law enforcement agencies and the system has the power to arrest, sentence and punish the offender accordingly. In the criminal trial, conviction and sentence come at the end of the entire proceeding/process.

**Definition of Sentencing.**

The Canadian Sentencing Commission in 1987 defined sentencing as the judicial determination of legal sanctions to be imposed on the person found guilty of an offence. Sentencing can be defined as the prescription of punishment by a court to someone convicted of a crime. Another definition of sentencing can be seen in the case of [[1]](#footnote-2)***ICHI V STATE 1996*** where it was held that a sentence is the judgment formally pronounced by the court or judge upon an accused person after his conviction in a criminal prosecution imposing the punishment to be inflicted.

In other words, it is the judgment formally declaring to the accused person, the legal consequences of the guilt which he has been confessed to or which he has been convicted of. Hence, after an accused person or a defendant has pleaded guilty or has been found guilty during the trail or prosecution the presiding judge or magistrate then enters judgment for conviction and sets the day aside for sentencing. A sentence is also defined as a definite order pronounced by the court of competent jurisdiction after the finding of guilt of the accused. **Section 248 of the Criminal Procedure Act** provides that if the court finds the accused person, the court shall pass a sentence on the accused person or make an order to reserve judgment and adjourn the case to some other date.

The purpose of sentencing to fundament the purpose of sentencing is to contribute along with the crime prevention initiatives, the respect of the and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives;

a. To denounce unlawful conducts.

b. To deter the offender and other persons from committing offences.

c. To separate offenders from society where necessary.

d. To assist in rehabilitating offenders.

e. To promote the sense of responsibility in offenders and acknowledgement of the harm done to the community and victims.

The supreme court in [[2]](#footnote-3)***MOHAMMED V OLAWUNMI 1993 paragraph A-H*** held as follows “Once a court of competent jurisdiction makes a finding of guilt in a criminal case of quasi-criminal matter, the conviction has been or regardless of the inferment of sentences consequent upon it. The sentence whether of imprisonment or payment of fine emanates from the discretion of the judge after the findings of the guilt and flows logically from the conviction”.

In Nigeria, those who have been previously convicted in criminal cases, usually attract partial sentences or punishment unlike first time offenders and at times vice versa. 6 basic principles or guidelines have been laid down by the Supreme Court to aid courts in reaching reasonable, just and fair sentences. They are as follows:

1. The nature of the offence

2. The character/nature of the offender.

3. The position of the offender among his confederates.

4. The rampancy of the offence.

5. Statutory limitation.

6. The concurrency of the sentence.

**1. The Nature of the Offence.**

As a principle of law and practice the nature of the offence committed by an accused person (the defendant) of which he has been found guilty, goes a long way in dictating/determining the extent of his punishment. The law is clear that a person cannot be guilty of an offence which as at the time being committed does not constitute a crime in any written law and its punishment clearly stated.

As stated in ***ADEYEYE & ORS V STATE,***a case of robbery by violence tried by the High court of Western states. The court imposed a sentence of 18 years imprisonment on the accused person. On appeal, the Western state court reduced the sentence to 10 years. The accused person unsatisfied with the discretion of the appeal court yet appealed to the Supreme court. The Supreme court reinstated the 18 years with 3 strokes of cane. The Supreme court stated that the sentence of the appeal court was too lenient because of the seriousness of the offence.

**2. The Character/Nature of the Offender.**

As a principle of law and rule of evidence (or vice versa) character evidence or evidence of character is inadmissible of law. However, when the character of the accused person is questioned the nature/evidence of his own character, becomes admissible in law.

In ***ADELEYE V AJIBADE,***the appellants bad character was significant in the restoration of an heavier punishment on them. Also in ***R V STATE,***the fact that the appellant had been previously convicted for defilement. This led the court, to increase the sentence from 18 months to 5 years imprisonment with hard labour.

**3. The Position of the Offender Among His Confederates.**

When the offender plays a minor role:

In ***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 the lieutenant should never be more than the leader. The leader of the gang should be punished more severely than the lieutenant. This to affirm that those who investigate should get a higher than those investigated. In that case, the late Awolowo the leader, got 10 years sentence so the lieutenant should not get a sentence higher than 10 years. The leader is usually epicenter of activities, the moving force and the progenitor of the crime.

Playing a major role:

 The offender who has played a major role in commission of a crime is usually visited with more severe punishment than those inflicted on minor participants. The above idea was given judicial recognition in ***QUEEN V MOHHAMED AND OTHERS.*** While the first appellant who was who was then leader was given a maximum sentence of 8 years of imprisonment, the other parties were given a maximum sentence of 6 years imprisonment. In ***STATE V KERENKU,*** although the appellant was found not to be the leader, the court was however of the view that she played a leading part in the incident and must take that into consideration. Also in ***IHOM V THE NATIVE AUTHORITY,*** where the appellants were all involved in riot in which many animals were mammed and destroyed. They all got sentences totaling 6 years imprisonment except the 6th appellant who got 8 years imprisonment for being the moving force of the riot.

**4. The Rampancy of the Offence.**

Rampancy of the offence is one of the most necessary consideration as it can be a mitigating factor or an aggravating one depending on the offence. Certain offences have been considered as serious in nature eg sexual offences especially when it involves children as victims. In ***ADEYEYE V THE STATE,*** a 3 years prison sentence was imposed on an offender for inserting his finger into the vagina of the little girl, age 9 who was hawking groundnut. Also in ***IKO V THE STATE***, a taxi driver was sentenced to 5 years imprisonment with hard labour for raping a passenger so violently.

 Where an offence is rampant or prevalent, courts have always thought that severity of punishment imposed will aid in stamping out the crime. In ***ADEYEYE V STATE,*** supra part of the reasons advanced for the reinstatement of the earlier penalty (18 years), was that the accused person had been convicted earlier of an offence. It would appear that the court worked on the assumption that anyone with a previous conviction has lost out in terms of mitigating his sentence.

Robbery with violence is also considered of a serious nature. In ***OLANIPELUN V THE STATE,*** during the robbery, D the leader ordered one of his fellows to shoot a victim. He complied but the gun did not go off. In sentencing with 5 years with hard labour, the court said inter-alia that society demand that such a man as D should be kept out of circulation from time to time.

Thus the gravity of an offence can also be linked to the rampancy of an offence. If considered rampant and grievous, the court would most likely impose a heavier punishment in the view to stamp out these types of crimes in the society.

**5. Statutory Limitation.**

The criminal statute of limitations is a law that/which forbids prosecutors from charging someone with a crime that was committed more than a specified number of years ago. The general purpose of statutory limitation is to make sure convictions occur only upon evidence that has not been deteriorated with time. After the period of the statute has run, the criminal is essentially free. Also, where the state itself has stipulated terms of imprisonment the court shall not exceed the statutory limit. However, not all crimes are governed by the statute of limitation. In some states, sexual offences with minors, crimes of violence, kidnapping, forgery, have no statutory limitation. Many states have adopted systems that felonies by category: felonies, misdemeanor and simple offences.

Furthermore, in Nigeria there are 2 types of statutory limitations:

a. Statutory maximum

b. Magisterial jurisdiction limitation.

In essence, whenever a statute itself stipulates a term of imprisonment no court should exceed its limits. In ***QUEEN V EYO & OTHERS,*** a case of unlawful assembly, the High court sentenced them to 5 years imprisonment. On appeal to the Supreme court reduced the sentence to 3 years because that was the maximum sentence stipulated by law. In ***AREMU V IGP,*** the magistrate court sentenced the accused persons to 2 years imprisonment, dissatisfied, the state appealed to the Supreme court. The Supreme court stated that it cannot impose punishment more than what the magistrate court imposed.

**6. The Concurrency of the Sentence.**

There are laws governing concurrent and consecutive sentences. When a person is charged and found guilty of more than two offences in Nigeria. The general rule is that whenever a court finds an accused person guilty of more than one offence, the sentence should run concurrently. The Supreme court this position by saying whenever the offences are similar or of similar nature/disposition, they should run concurrently.

In ***NWANKWO V THE STATE,*** here the accused person was found guilty and sentenced for store breaking and possession of breaking instruments of the same transaction. The Supreme court held that the sentence should run concurrently because they were crimes that emanated from the same transaction.

In conclusion, the above principles are the guidelines that the writer would consider as a judge in ensuring the sentence for Evans is achieved appropriately.

1. 9 NWLR pt 47 183 Act 89 [↑](#footnote-ref-2)
2. 4 NWLR pt 348 Act 401 [↑](#footnote-ref-3)