NAME: ALUKO OLUWADABIRA DESOLA

MATRIC NO: 17/LAW01/ 054

COURSE TITLE: CRIMINOLOGY II

COURSE CODE : LPI 304

QUESTION:

Evans , a notorious kidnap kingpin and armed robber who was involved in series of assault , rape and defilement of young girls has finally been apprehended by the police. He was arrested same border , dressed like a woman and attempting to cross the border to benin republic. Investigation into his activities was concluded by the police and was brought to the high court where you are the presiding judge. After a king trial 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**

 This article is mainly to help state out the guidelines laid down by the supreme court as regards to Evans charges as he was found guilty . Firstly we should know what a sentence is, A sentence is defined as the definite position order put out by a court of competent jurisdiction at the end of a criminal trial after the finding of a guilt of the accused person **section 248 of the criminal procedure act** provides that if the court finds the accused person guilty, the court shall pass sentence on the accused person or mantle an order to reserve judgement and adjourn the case to Some other dates . 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 gave the powers to arrest arraign , try and sentence and punish the offenders accordingly.

 It is the judge's job to order a penalty for your conviction. The criminal statute under which you were convicted provides the appropriate sentence for the particular crime. ... Once the judgedetermines the appropriate sentence range provided by the statute, they will consider aggravating and mitigating circumstances . The various types of sentences of a particular time observed is contained in the criminal procedure act, criminal procedure code and criminal code .

 A criminal trial usually involves the state and the society with the offender who committed the crime or who is alleged to have committed the crime and the process of determining if the accused actually committed the crime or alleged to have actually committed the crime .In a criminal trial , conviction and sentence come at the end of the entire proceeding process.

 One of the main purpose of sentencing is to contribute along with the crime prevention initiatives , the respect of the law the maintenance of a just and peaceful society by imposing just sanction that have one or more of the following objectives .

1. To denounce unlawful conduct
2. To deter the offender and other persons from committing offences.
3. To separate offenders from society from society where necessary
4. To assist in rehabilitating offenders
5. To promote the sense of responsibility in offenders and acknowledgement of the harm done on the community and victims.

 The supreme court in the case of **Muhammad v olawunmi 1993** held as follows once a court competent jurisdiction makes a finding of guilt in criminal case of what criminal matters , the conviction has been or regardless of the consequences of the sentence . The sentence whether of imprisonment or payment of fine emanates from the discretion of the judge after the finding the guilt and flows logically from the conviction.

**ARTICLE**

 In Nigeria those who have been previously convicted in criminal cases usually attract harsher or harder punishment or sentences unlike first time offenders and vice versa. The supreme court has laid down six (6) basic principles or guidelines to aid courts in reaching reasonable just fair sentence:

1. Nature of the offence
2. Character and nature of the offender
3. The position of the offender among his confederate
4. The rampancy of the offence
5. Statutory limitation
6. Concurrency of the sentence
7. **NATURE OF THE OFFENCE**

 The Nature and Causes of Nature. ... Some consider crime a type of anomic behaviour; others characterize it as a more conscious response to social conditions, to stress, to the breakdown in law enforcement or social order, and to the labelling of certain behaviour as deviant

 As a principle of law and practice the nature of the offence committed by an accused person of which he has been found guilty goes a long way in determining the extent of his punishment. The law is clear that a person cannot be found guilty of an offence which at the time being committed does not constitute a crime in any written law and it’s punishment clearly stated . In **Adeyeye and others v state** a case of robbery by violence tried by the high court of western state the court imposed a sentence of 18 years imprisonment on the accused person. On appeal the western state appeal court reduces the sentence to 10 years . The accused person unsatisfied with the descion of the appeal court yet appealed to the supreme court reinstated in 18 years with 3 strokes of the cane. The supreme court stated that the sentence of the court of appeal was too lenient because of the seriousness of the offence .

 See also **Adesanya v the queen** the case of forgery and the principle was established that only in exceptional cases can a fine be sufficient or appropriate punishment for forgery of court processes. The seriousness of the offence , it’s nature, the gravity makes forgery of court process grievous. In the case mentioned above the accused person having committed the offence of forgery was sentenced to pay fine on appeal at the instance of the accused person . The court held that the payment of fine was too small as a punishment for the grevious offence of punishment, hence imprisonment.

 See also **Etim v the queen** in the case of manslaughter unintended homicide either by provocation , murder or automobile accident. In the cases of automobile homicide there is a tendency the court to impose slight penalties punishment as opposed to provocation murder . In **idoye v state** the accused person drove his car at night without head lamps in a hilltop area in the process he killed a pedestrian he was sentenced to 5 years imprisonment by the high court in addition 10 years suspension from driving . The supreme court reduces the sentence to two and a half years imprisonment and 5 years disqualification from driving .

 Similarly in  **muhammed v cop** the accused person who had never driven in his life jumped into his car and killed some pedestrians he was sentenced to 3 years imprisonment and 1o years duswuslifucstij from driving by the high court and the supreme court reduces the sentence to 18 months imprisonment and 5 years disqualification from driving. In contrast in **adekanmi v the state** the supreme court held his defence of provocation and imposed a term of 15 years imprisonment. Also in **chuckwu obayi v the state** provocation is a statutory recognised defence or criminal defence which serves as a mitigating factors and it reduces cases of murder to manslaughter is life imprisonment however judges emokit their discretion in determining the extent of sentences to the accused convicted .

**APPLICATION:** In their case of Evans charged with rape , armed robbery , defilement, ritual killing and many more exams crimes can all be regarded as grevious offences and deserves severe and serious punishment before being sentenced .

1. **CHARACTER AND NATHRE OF OFFENDER**

As a principle of law and a rule of evidence and vice versa character evidence or evidence character are inadmissible in law . However when the character of the accused the person is in question the nature or evidence of his character of his becomes admissible in law .

 In **Adeyeye v the state** supra part of the reasons advanced for the reinstatement of the earlier penalty (18 years) was that the accused person has been convicted earlier of an offence. It would appear that the court worked on the assumption that anyone with a previous conviction has list out in terms of mitigating his sentence . In **Adeleye v ajibade** the appellant bad character was significant in the restoration of an heavier punishment on them. In **R v state** the fact that the appellant had been previously convicted for defilement this led to the court to increase the sentence from 18 months to t years imprisonment with hard labour .

 In **R v bangazo** with a heavy stick the 2 accused person committed a deliberate assault on the deceased with the intention to do him grevious harm by the way retaliation for an assault committed by the deceased children and the appellant younger brother . Death resulted and the appellant were Charged therefore convicted . After the murder in 1950 the appellant ran away to a place in Borno. They surrendered themselves early in 1959 and were tried in December in 1959 . At the time of their offence the appellant were under 17 years of age but old enough to be criminally responsible . By the time they were convicted they were rightly sentenced to death as was said by adenuma cjn under **section 368 (3) of the criminal procedure act** it is the age if the offenders at the time of conviction that is material as it seems clear that the appellant cannot invoke the provision of the sections but the responsible authorities will no doubt give such weight as he thinks he fit for the possibility that if the appellant had not run away and had been brought to trial at once the section would have applied this the appellant appeal was dismissed .

**APPLICATION: A**S it is seen in the case of Evans due to all the grevious offences he is being charged with it so clearly shown that Evans is one that’s prone to commit more crimes and had committed crimes for instance it was said here that he was involved in series of assault that is he is a constant offences of such crime due to this his punishment should severe .

1. **THE POSITION OF THE OFFENDER AMONG HIS CONFEDERATE**

WHEN THE OFFENDER PLAYS A MINOR ROLE

IN **Enaoro v the queen** a case of threasonablefelony Enaoro was sentenced to 15 years imprisonment by the high court. The supreme court reduces the sentence to 5 years and said the sentence imposed on the lieutenants should never be more than the leader. The leader of the 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 leader got 10 years sentence so the lieutenant should not get a sentence higher than 10 years. The leader is usually the epicentre of activities . The moving force and the progenitor of the crime .

WHEN THE OFFENDER PLAYS A MAJOR ROLE

The offender who has played a major role in the commission of the crime is usually visited with more or severe punishment than those inflicted or said to be minor participants. The above idea was given judicial recognition in **Queen v Muhammed and others** while the first appellant who was the leader was given a maximum of 8 years of imprisonment the other parties were given a maximum of sentences 5 years imprisonment. In **state v kerenku and** althoughthe appellant was not the leader the court was however of the view that she played a leading part in the incidence and must take that into consideration. See also **ihom and another v the native authority** where the appellant were all involved in riot in which many animals were manned and destroyed . They all got sentenced to total of 6 years of imprisonment the 6th appellant who got 8 years imprisonment for being the moving force riot .

**APPLICATION:** AS stated above an individual can either play a minor role or a major role in a crime I’m this situation with Evans he is said to be a major player in all the crimes he was charged with he participated in all by himself he didn’t send a representative this is also very essential to be considered In his sentence .

1. **RAMPANCY OF THE OFFENCE**

Where an offence is rampant or prevalent, courts have always thought the severity of punishment imposed will aid in stamping out crime . See **R v Hassan and owolabi** the accused person was sentenced to 5 years by the high court for forgery mad another five years for stealing . He appealed and the supreme court expressed its view thus “ fraud on the customs are shockingly prevalent and forgery of the commercial document strikes at the root of all credits, we are not disposed to reduce the sentence by one day .

 See  **state v micheal ayegbemi** it was also because the courts view in state v another that robbery on roads and water in recent times had been on increase and disturbing that the 2 parties to the robbery were sentenced to 20 years imprisonment. In **onyilokwu v cop** the offender was initially detained for causing harm at the end he wa discharged and acquitted the court expressed the view that 3 years imprisonment earlier imposed on him did not show adequate consideration not only for his first offender status but also for an offence which wasn’t prevalent in that community.

**APPLICATION:** Before a criminal is charged with a sentence the rampancy of the crime has to be looked into Evans in this situation is said to be an offender of series of assault that is he is not a first offender on that particular crime committed .

**V) STATUTORY LIMITATION**

A statute of limitations is a law passed by a legislative body to set the maximum time after an event within which [legal proceedings](https://en.m.wikipedia.org/wiki/Legal_proceeding) may be initiated. When the time specified in a statute of limitations passes, a claim might no longer be filed or, if filed, may be subject to dismissal if the defence against that claim is raised that the claim is time-barred as having been filed after the statutory limitations period. When a statute of limitations expires in a criminal case, the courts no longer have jurisdiction. Most crimes that have statutes of limitations are distinguished from serious crimes as these may be brought at any time

 The general purpose of statue of limitation is to make sure convictions occur only upon evidence that has not deteriorated with time after a period of the statue 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 statue of limitation . Murder for example in some state, sexual offences with minors crimes of violence, kidnapping, arson, forgery have no statutory limitation. Two types of statutory limitation

* + - * 1. Statutory maximum
				2. Magistrate jurisdiction limitation

In essence when a statute itself stipulates a term of imprisonment no court should exceed the statutory limit in **Queen v who and ors** a case of unlawful assembly the high courtsentenced 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.

**Aremu v IGP**  the magistrate court sentenced the accused person to 2 years imprisonment dissatisfied the state appealed to the supreme court the supreme court held that it cannot impose punishment more than what the magistrate court had imposed. See also **mordi v cop**

**APPLICATION:** In this case Evans was charged with kidnapping, armed robbery , rape , defilement, ritual killing Extortion and obtaining property by false pretence different statues has provided for all this crimes for instance **section 359 of the criminal code act provides for rape** and the punishment is liable to imprisonment for fourteen years with or without caning etc.....

**Vi)** Concurrency of the sentence

There are laws governing concurrent and consecutive . 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 sentence should run concurrently. The supreme court held this position by saying wherever the offences are similar of similar nature of disposition they should run concurrently **see Nwankwo v the state** here the accused person was found guilty mad sentenced for store breaking and possession of breaking of the same transaction instrument . Supreme court held that the sentence should run concurrently because they were crimes emanated from the same transaction .

**APPLICATION:** in this case of Evans he was a notorious kidnap kingpin and armed robbery who was also involved in series assault of rape this statement explains that Evans was constantly involved in this criminal acts listed above and his punishment deserves to be concurrently

**CONCLUSION**:

Most crimes are specifically enumerated in constitutions or statutes, and the provision that identifies the specific crime will also identify the [appropriate punishment](https://criminal.findlaw.com/criminal-procedure/sentencing-law-faq.html). For example, a statute may read, "Violation of this statute constitutes a misdemeanor, punishable by a fine not to exceed $500 or imprisonment not to exceed 30 days, or both." Given this range of potential punishment, a judge will then consider certain "aggravating" or "mitigating" circumstances to determine where along the prescribed spectrum a particular criminal's punishment should fall.

Common factors considered by judges include:

* Whether the offender is a "first-time" or repeat offender,
* Whether the offender was an [accessory](https://criminal.findlaw.com/criminal-charges/aiding-and-abetting-accessory.html) (helping the main offender) or the main offender,
* Whether the offender committed the crime under great personal stress or duress,
* Whether anyone was hurt, and whether the crime was committed in a manner that was unlikely to result in anyone being hurt,
* Whether the offender was particularly cruel to a victim, or particularly destructive, vindictive, etc.
(sometimes) whether the offender is genuinely contrite or remorseful.

Finally an offender cannot just be sentenced without some factors being considered apart from the ones aforementioned also the one talked about in the main body of this article including

* Nature of the offence
* Character and nature of the offender
* The position of the offender among his confederate
* The rampancy of the offence
* Statutory limitation
* Concurrency of the sentence