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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. Investigation 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 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.

ANSWER: This question bothers on sentencing as well as the six basic principles that courts in reaching a reasonable, just and fair sentence. In order to to state the factors that would guide this writer ascertaining the appropriate sentencing for Evans, this writer would firstly:

1) Give a detailed explanation of the term sentencing back up with judicial authority

2)State the importance of sentencing as well as its impact in the criminal justice system and the society as a whole

3) State the six roles laid down by the supreme court as well as brief analysis of each of them.

EXPLANATION OF THE LEGAL TERM SENTENCING:

At all levels of our relationship with God, other human beings and even our domestic animals, we have rules and regulations which we should obey. It is failure to abide by such rules and regulations that attracts sentence and punishment. A sentence is therefore a decree of punishment. In law, a sentence generally involves a decree of imprisonment, a fine and other punishments against an accused convicted of a crime. The author of Black’s Law Dictionary defines a sentence as:‘The judgment that a court formally pronounces after finding a criminal defendant guilty; or the punishment imposed on a criminal wrongdoer.’

While Oxford Advanced Learner`s Dictionary defines a sentence as:‘The punishment given by a court of law’

In their views, Okonkwo and Naish state that if punishment is the object of criminal law, then sentencing is simply the way in which principles of punishment are applied to individual offenders.

Again, sentencing was defined in the case of ICHI VS THE STATE NWLR in 1996 as the judgement formally pronounced by he court or judge upon an accused personafter his conviction in a criminal prosecution imposing the punishment to be inflicted. In otherwords, it is the judgement formally declared to the accused person , the legal consequences of the guilt which he has confessed to or which he has been convicted of .In *SECTION 248 OF THE CRIMINAL PROCEDURE ACT,*provides that if the court finds an accused person guilty of an offence, the court shall pass sentence on the accused person or make an order to reserve judgement and adjourn the case to some other date.

Importance of sentencing as well as its impact on the Nigerian criminal justice system as well as NigeIria as a whole

Sentencing generally aims at the protection of the society through prevention of crime or reform of the offender which may be achieved by the means of deterrence, elimination or reformation/rehabilitation of the offender. The justification is that imposing the penalty will reduce the future incidence of such offences by preventing the offender from re-offending or correcting the offender so that the criminal motivation or inclination is removed or by discouraging or educating other potential offenders. These are known as reductive justification. As such, the key purpose of sentencing includes:

1. Punishment: So as to denounce unlawful conducts.
2. Deterrence (general and specific): So as to discourage the offender or other person from committing the offences.
3. Rehabilitation: In order to improve the offender’s attitude and character so that he is less inclined to commit offence.
4. Denunciation: Public condemnation so as to assist in rehabilitating the offender.
5. Protection of the community: In order to maintain a just and stable society characterised by a peaceful and orderly co-existence.

It must however, be noted, that Sentence should not be passed in anger or pity. It should be passed with the aim of doing justice. However, the Criminal and Penal Codes as well as other statutes creating offences specify the quantum and nature of sentences. The quantum of sentences is specified with or without judicial discretion. For instance, certain sentences are made mandatory by law, leaving no discretion to the Judge. Where such is the case, the Judge is not allowed to exceed the prescribed sentence on a person found guilty of that crime, nor should he mete out a sentence less than prescribed by the crime. The case which clearly underscored this principle of the law is to be found in the case of Dada v. board of customs & excise. 8 In this case, the accused was convicted under Section 44 (1) (b) of the Customs and Excise Management Act. The that crimes are punished to show those who have broken the law and those who might be tempted to break it that the law has teeth that bite. In short, the enterprise of criminal justice system is to make the community safer by identifying and then removing (or at least watching) those who have shown themselves to be dangerous, be it a corporation or an individual.

Again, in the case of MUHAMMED VS OLAWUNMI (1993) 4 WLR, the court held that once a court of competent jurisdiction makes a finding of guilt in a criminal case of quasi-criminal matter, the conviction has been made 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 finding of guilt and flows logically from the conviction.

In Nigeria, those who have been previously convicted in criminal cases usually attract partial sentences or punishments unlike first time offenders and at times vice versa. Therefore, the supreme court has laid down six basic principles or guidelines to aid courts in reaching reasonable, just and fair sentences and they are:

1. The nature of the offence

2. Character or nature of the offender

3. The position of the offender among his confederates

4. The rampancy of the offence

5. The statutory limitation

6. Concurrency of the sentence.

BRIEF ANALYSIS OF EACH PRINCIPLE.

Nature of the offence:

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 essence, the nature of the offence committed by the accused person which he or she has been found guilty of, goes a long way in determining the extent of his punishment. This principle of law is evident in the case of ADEYEYE VS THE STATE which bothered on armed robbery. The High court of the Western State imposed a jailterm of 18 years on the accused. On appeal, the appeal court reduced such sentence to 10 years. Still unsatisfied, the accused appealed to the supreme court which re-instated the earlier sentence given by the court of first instance with three strokes of caningon grounds that the appeal court was too lenient due to the seriousneness as well as gravity of the offence. This was a similar approach adopted by the court in the case of ADESANYA VS THE STATE.

Again, in cases of manslaughter ie. Unintended homicide either by provocation nurder or automobile accident.. In cases of automobile accidents, there is tendency of the courts to impose slight penalties as opposed to provocation murder. In the case of IDOYE VS THE STATE, the supreme court reduced the accused’s initial penalty of 5 years imprisonment as well as 10 years suspension from driving to a jail term of two and a half years well as as 5 years disqualification from driving.

However, in cases of provocation manslaughter, there is tendency of the court to impose an average jailterm of 10years. In ADEKONMI VS THE STATE, the accused person killed his wife in sudden overflow of emotions when she told him that their children belonged to her lover and that he was impotent. The Supreme Court upheld his defence of provocation and imposed a jail term of 15 years imprisonment. This further stresses the fact that provocation is a mitigating factor so as to reduce a murder case to a manslaughter case.

APPLICATION TO THE SCENARIO: In the case of Evans, this writer as the judge would strongly suggest that the accused faces the full penalty as prescribes by law for each offence due to the seriousness of the offence the accused had committed. Armed robbery, rape, defilement, ritual killing extortion and obtaining property by false pretence are all felonies with various jailterms stipulated for each of them. In essence, Evans should be given full and heavy jail term due to the seriousness of offences he has committed. The law provides that obtaining property through force, having unlawful carnal knowledge of a woman without consent as well as defilement and obtaining property through false hood are great offences thus providing jail terms of up to ten years. I truly suggest that Evans should be given full penalty due to the fact tha if he’s given a lesser punishment such as fine payment or c0mmunity service, potential offenders would be encouraged due to the fact that they have been left with an impression that if caught, the punishment will not be great. This position of law was aptly captulated in the case of ADEYEYE VS THE STATE where the court re-instated the initial sentence given by the lower court as again 10years given by the appeal court thus adding that armed robbery was a great offence and that the appeal court was being too lenient.

CHARACTER OR NATURE OF THE OFFENDER

This basic principle simply means that the character or nature of the offender goes a long way in determining the extent of punishment the accused person could deserve. As a principle of law, rule of evidence is admissible in law. However, if character of the accused person is in question, then evidence of his character becomes admissible in law. There is no clear-cut way in determining the the specific nature of an offender so as to mitigate his or her punishment, it is ususally left at the discretion of the court. In the case of ADEYEYE VS THE STATE, part of the reasons why the accused was given a heavier punishment of 18 years was that he was previously convicted of the same crime. The position of the court in that case was that anyone with a previous conviction has lost out in terms of mitigating his punishment. Again in the case of R VS BANGAZA, the court was of the view that the accused who was convicted at the age of 17 would have faced a lighter punishment there by mitigating such punishment after careful consideration of his age, however, the accused lost such an opportunity due to the fact that he ran away in order to avoid apprehension by the police. If he had given in to the police immediately, it could have been a different case.

APPLICATION TO THE SCENARIO: After careful consideration of the factual circumstances in Evans’s case, this writer suggests that Evans should be given heavy punishment due to the fact that from his character or nature, we can infer that Evans is a hardened criminal who could go to the extent of changing his identity just to avoid the police. Such an act would justify this writers suggestion to impose heavier punishment just as seen in the case of ADEYEYE VS THE STATE.

The position of the offender among his confederates: This term simply means that the position of the offender as at when the crime was commited goes a long way in determining the extent of is punishment. Here there are two things that would be considered: When the offender plays a major role and when he plays a minor role.

When the offender plays a major role, that is, when the offender seems to be the progenitor and leader of the offenders committing such offence, such an accused person must face a higher punishment as opposed to when he’s simply a person following orders of another leader. This position was illustrated in the case of ENAHORO VS THE QUEEN where the court was of the view that the sentence imposed on the lieutenant who was following orders of his leader, should not be higher than that of the leader. The court was also of the view that the leader should be punished more severely that the lieutenant. Thus affirming the principle of law that those who instigate should get higher punishment than those instigated. Summarily, it means that an offender who has played a major role in the commission of an offence is usually visited with a more severe o=punishment than that of a minor participant.

Again, in playing a minor role, such an offender would be given a lesser punishment.

APPLICATION TO THE SCENARIO: Looking at the facts of the scenario, Evans should be given a heavy punishment due to the fact that Evans played a major role in kidnapping, he played a major role in raping, he played the major role in armed robbery as well as obtaining false property and therefore he should get the heavier punishment. This principle has been illustrated in the case of QUEEN VS MOHAMMED & ORS where the leader was given maximum sentence of 8 years while other appelants were given 5 years.

Rampancy of the offence: The principle here is that an accused person would face a heavier punishment for an offence that is frequent and reoccurent in a particular society because most criminal justice systems aim to ensure that crime prevention and deterrence especially when a crime occurs all the time takes place. Essentially, higher punishment would be meted so as to avoid repetition of such a crime. In the case of R VS HASSAN & OWOLABI, the accused persons were sentenced to a heavier punishment of 5 years for stealing and an additional 5 yeaars for forgery due to the prevalent nature of the two offences at that time.

APPLICATION TO THE SCENARIO: Looking at the facts of the scenario, heavy punishment should be meted due to the fact that the offences such as rape, armed robbery, defilement,etc are all very frequent and prevalent in nature in the Nigerian society and therefore, he should be sanctioned accordingky so as todeter potential offenders from engaging in such crime.

STATUTORY LIMITATION : This is the statutory obligation that forbids prosecutors from charging someone with a crime committed more than a specified number of years ago. Its purpose is to make sure convictions only occur upon evidence and not its time. This simply implies that judges must take into consideration during sentencing that such criminal is essentially free once the period provided by statute has run. Again, where the state itself has stipulated terms of imprisonment , the court shall not exceed the statutory limits. Worthy of note Is the fact that not all offences are governed by statute of limitation such as murder, rape, forgery, etc. Popularly in Nigeria, the two types of limitation which are statutory maximum and magisterial jurisdiction limitation have been illustrated in various cases thus providing guidelines for judges to follow during sentencing. In the case of QUEEN VS EYO & ORS, a case which bothered on unlawful assembly, the high court sentenced the appelants to 5years imprisonment but however on appeal, the sentence was reduced to 3years due to the fact that the power to mete sentences as stipulated by law was limited to 3years only.

APPLICATION TO THE SCENARIO: Looking at the facts of the scenario, Evans should be sanctioned accordingly due to the fact that the offences committed are great offences which aren’t governed by any statutory limitation as to time of prosecution.

CONCURRENCY OF THE SENTENCE: The law here, provides that whenever a person is charged and found guilty of more than two offences in Nigeria, the sentences should run concurrently meaning that they should not run separately. It implies that when offences emanate from the same illegal act, the sentence should run concurrently and not separately .The supreme court held this position by saying that whenever the offences are of similar nature or position,the should run concurrently. In NWANWKO VS THE STATE the accused person was found guilty of store breaking as well as possession of breaking instruments. The court held that the sentence should run concurrently because the crimes emanated from the same actus reus.

APPLICATION TO THE SCENARIO: In the case of Evans, the sentences should run consecutively due to the fact that the offences committed did not emanate from one single illegal act. Rape was not committed as a result of kidnapping, armed robbery was not as a result of the kidnapping, other offences too were committed separately and therefore he should be given sever punishment consecutively.

CONCLUSION:

Summarily, after careful examination of the factual circumstances as well as having in mind guidelines provided by the supreme court, Evans should be punished heavily due to the fact that the offences committed are serious, his character depicts one of a hardened criminal, his position is that of a major role, those offences are very prevalent and rampant, there is no known statutory limitation that would mitigate punishment or exonerate him from criminal liability, and such offences were committed consecutively. All these factors further stress the position to sentence him with heavy and full punishment as stipulated by law.