OKAFOR VICTORY

MATRIC NO: 17/LAW01/213.

COURSE TITLE: CRIMINLOGY II.

COURSE CODE: LPI 304.

ASSIGNMENT TITLE: SENTENCING.

Assignment;

Evans, a notorious kidnap kingpin and armed robber, who has also been involved in a 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 were concluded by the police and he was brought to the High Court were 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 money 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.

Criminal justice system in Nigeria commences with the commission and continues with subsequent interventions by the law enforcement agencies and the system has the power to arrest, arraign, try, sentence and punish the offender accordingly. The criminal trial usually involves the state and society with the offender who committed the crime or who is alleged to have committed the crime.

In the criminal trial, conviction and sentence comes at the end of the entire proceeding or process.

Sentencing means the prescription of punishment by a court to someone convicted of a crime. Hence, after an accused person or defendant has pleaded guilty or has been found guilty during the trial or prosecution, the presiding judge or magistrate then enters judgment for conviction and sets the day aside for 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 offense.

A generally accepted definition is that a sentence is defined as the definite position or order pronounced by a court of competent jurisdiction and the end of a criminal trial after the finding of 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 the sentence on the accused person or make an order to reserve judgment and adjourn the case to some other date.

The supreme court in *Mohammed v Olawunmi 1993 4 NWLR pt 348 Act 401 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 made or regardless of the defilement of sentences consequent upon it.

The Supreme Court has laid down six (6) basic principles or guidelines to aid courts in reaching reasonable, just and fair sentence;

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

NATURE OF THE OFFENCE:

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

As 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 eighteen (18) years imprisonment on the accused person. On appeal, the Western State Appeal Court reduced the sentence to ten (10) years. The accused person unsatisfied with the decision of the appeal court yet appealed to the Supreme Court. The Supreme Court reinstated the eighteen (18) years with three (3) strokes of cane. The Supreme Court stated that the sentence of the appeal court was too lenient because of the seriousness of the offense.

Also in *Adesayo 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 of forgery of court processes. The seriousness of the offense, its nature and gravity makes forgery of court processes grievous. *1964 1 ANLR* in this case, the accused person having committed the offense 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 a punishment for the grievous offense of forgery, hence the imprisonment.

From this guideline laid down by the Supreme Court, in sentencing Evans as the presiding judge after having found him guilty, I would ensure to understand fully the nature of his offense and make this my sole deciding factor in prescribing a proper and adequate sentence or punishment for him.

CHARACTER/NATURE OF THE OFFENDER:

As a principle of law and rule of evidence, character evidence or evidence of character is inadmissible in law. However in *Adeyeye v The State,* part of the reasons advanced for the reinstatement of eighteen (18) years penalty was that the accused person had been earlier convicted of an offense. It would appear that the Court worked on the assumption that anyone with a previous conviction has lost out in terms of mitigating the sentence.

In *Adeleye v Ajibade,* the appellant’s bad character was significant in the restoration of a heavier punishment on them. Also in *R v The State*, the fact that the appellant had been previously convicted for defilement led the court to increase the sentence from eighteen months to five years imprisonment with hard labor.

This stipulation of the Supreme Court does not bode well for Evans because considering thuis guideline, any chance of Evans mitigating his sentence is slim to none because of his notorious reputation, character and crime rate.

THE POSITION OF THE OFFENDER AMONG HIS CONFEDERATES:

1. **When the offender plays a minor role;**

In the case of *Enahoro v The Queen* a case of treasonable felony, *Enahoro* was sentenced to fifteen years imprisonment by the High Court. The Supreme Court reduced the sentence to five years and said; ‘a sentence imposed on a lieutenant should never be more than the leader. The leader of a gang should be punished severely than the lieutenants. This is to affirm that those who instigate should get a higher punishment than those instigated.

1. **When the offender plays a major role;**

The offender who has played a major role in the commission of a crime is usually visited with more severe punishment than those inflicted on minor participants. This idea was given judicial recognition in *Queen v Mohammed and others.* While the first appellant, who was the leader was given a maximum sentence of eight years imprisonment, the other appellants were given a maximum sentence of five years.

RAMPANCY OF THE OFFENCE:

Where an offence is rampant or prevalent, courts have always thought that the severity of sentences imposed would aid in stamping out the crime.

In *R v Hassan and Owolabi,* the accused person was sentenced to five years by the High Court for forgery and another five years for stealing. They appealed and the Supreme Court expressed its views as thus: ‘fraud on the customs are shockingly prevalent and forgery of commercial documents strikes at the root of all credits, we are not disposed to reduce the sentence by one day’.

Also in *State v Michael Ayegbemi,* it was also because of the court’s view in *State v another*, that robbery on the roads and water in recent times had been on increase and disturbing, that the two parties to the robbery were sentenced to twenty years imprisonment.

The rampancy of Evan’s offence will also serve as a determining factor in his sentence.

STATUTORY LIMITATIONS;

A statute of limitation is the law that forbids prosecutors from charging someone of a crime that was committed more than a specified number of years ago. The general purpose of statute of limitation is to make sure convictions occur only upon evidence that has not deteriorated with time.

After the period of a statute has run, the criminal is essentially free. Also where the state itself has stipulated terms of imprisonment, the courts shall not exceed the statutory limit. However, not all crimes are governed by the statute of limitation, for example murder.

Furthermore, in Nigeria there are two types of statutory limitations; statutory maximum and magisterial jurisdiction limitation. In essence, whenever a statute itself has stipulated terms of imprisonment, no court should exceed the statutory limit.

In *The Queen v Eyo and others,* a case of unlawful assembly, the High Court sentenced them to five years imprisonment. On Appeal to the Supreme Court, the Supreme Court decreased the sentence to two years, because that was the maximum sentence stipulated by law.

CONCURRENCY OF THE SENTENCE;

There are laws governing concurrent and consecutive sentences. When a person is charged and convicted or found guilty of more than two (2) offences in Nigeria, the general rule is that whenever a court finds an accused person guilty of more than one offense, the sentences should run concurrently. The Supreme Court upheld this decision by saying; ‘whenever the offences are of similar disposition, they should run concurrently’.

In *Nwaifor v The State,* where the accused person was found guilty and sentenced for store breaking and possession of breaking instruments, the Supreme Court held that the sentence should run concurrently, because they were crimes that emanated from the same transaction.