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**COURSE: CRIMINOLOGY II**

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**QUESTION**

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, defilment , 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 regards to the guidelines laid down by the supreme court.

**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. 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,

**His lordship Justice Douglas**, in his paper titled Administration of Criminal Justice: Sentencing Policy presented at Conference of All Nigerian Judges, 1988 says:

The term “sentence” or “judgment” in legal parlance may be said to denote the action of a court of criminal jurisdiction formally declaring to an accused the legal consequences of the guilt to which he has confessed or of which he has been convicted. Generally, therefore, a sentence is the punishment inflicted upon a convict at the end of the criminal trial.

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. In this case, the accused was convicted under **Section 44 (1) (b) of the Customs and Excise Management Act**.

The punishment for the offence of unlawful importation under the subsection is 5 years imprisonment without the option of fine. The trial Judge sentenced the accused to 2 years imprisonment. The accused appealed against the sentence contending that he should have been given an option of fine. His appeal was dismissed. The Court of Appeal maintained that the provisions of the CEMA being specific provisions, override the general powers given to the Court under **Section 382 (1) CPA or Section 23 (1) CPC**. Also, where separate offences are charged together, each must receive a separate sentence but if they all form part of the same criminal action, sentences will be concurrent. In the case of John V. The State, it was held that the sentences for housebreaking and stealing should run concurrently. Where however a term of imprisonment in default of fine is ordered, it cannot run concurrently with a sentence of imprisonment imposed at the same time or with default sentence in respect of another offence. In sentencing an offender to a fine, it must not be heavy for him to pay and the fines imposed on different counts at the same trial are to be cumulative.

The defendant has been found guilty of the following crimes (kidnapping, armed robbery, rape, defilement, ritual killing, extortion and obtaining property by false pretence) of which I as the judge will be administering the sentencing and in doing so have to consider certain factors /guidelines to follow whilst sentencing.

The supreme court in **muhammed v olawunmi 1993** stated 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 sentences consequent upon it. The sentence whether of imprisonment or payment of fines emanates from the discretion of the judge after finding the guilt and flows logically from the conviction. The supreme court has laid down basic guidelines/ principles to be used in coming to a just and fair sentence.

As earlier alluded, when a person is convicted of a crime, many factors are considered by the sentencing Judge, Magistrate or the Jury before sentence is pronounced. These factors may be classified into two, namely: mitigating and aggravating factors. Mitigating factors are those conditions that may weigh on the mind of the sentencing Judge which may persuade him to impose a lesser punishment on the offender after conviction, while the aggravating factors are those considerations that may likely provoke the mind of the sentencing Judge which may cause him to impose a heavier punishment on the offender after conviction66. Some of these mitigating factors were carefully highlighted in the Nigerian case of **COP v Buhari** where His Lordship, M.M. Kolo J. (as he then was) stated as follows:

Some of such considerations include the age of the convict, first offender status, and admission of guilt. Conduct of the offender after commission of crime and also his good work record are also factors for consideration.

**Previous Record of the Accused**

The previous record of the accused is very important. Thus, a hardened criminal who has previously been convicted for the same kind of offence would attract a higher punishment than a mere first offender. The above proposition perhaps influenced the West African Court of Appeal in the often quoted case of **R v Adegbesin**. In this case, the Court reviewed the previous record of the convict who had been involved in various crimes of the same kind and resemblance at different times and had been to prison severally. Consequently, his jail term of 3 years was reviewed to 6 years on appeal. In contrast, in the case of **R v Williams** a suspect aged 20 years, attempted rape on his victim with whom, he and others had been drinking at a hotel. The suspect had a good record and impeccable family background. He had no sexually related indictment and was not accustomed to drinking whisky which probably aroused his passion. He was convicted for attempted rape. On the basis of the above facts the court released him on probation and ordered him to pay £75 to his victim for bodily injury done to her by the convict. The above cases point to the fact that previous record of the convict goes a long way to affect the extent of punishment a Court may impose on individual‟s cases even if the offences are the same.

**Nature of the Offences/Crime**

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 Georgia** 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 bailable. Similarly, Courts have taken a very serious view of the offence of assault with intent to maim or disfigure. Thus, in **R. V. OZULOKE** 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. Similarly, in the case of **R v. Manson** , the convict was sentenced for life imprisonment for raping a small girl under his care with such violence as to cause the tearing of the virginal wall extending into the urethra and soft tissues of the pelvis, which later led to the death of the small girl after much bleeding. The court while sentencing the convict stated thus: It is difficult to imagine a worst case of manslaughter and the only punishment to be imposed is that of imprisonment with hard labour for life.

**The Age of the Offender**

Two aspects of the age factor have gained the attention of the Nigerian law and practice. These are youth between 7 to 14 years of age. Generally, a person under 7 years is not criminally responsible for any act or omission allegedly committed and a person under 12 years is not criminally responsible for any act or omission unless it is proved that at the time of doing the act, he had the capacity to know that he ought not to do the act or make the omission. In the case of **State v. Nwabueze** the court held that children are not normally kept in prison custody but in remand homes upon conviction and at the pleasure of the Governor. A person under the age of 17 years in Nigeria shall not be sentenced to death if found guilty of a capital offence. Furthermore, a young person shall not be imprisoned if he can be suitably dealt with in a less serious way. Age, therefore, is a very serious factor in sentencing and could influence the mind of the sentencing Judge in various ways. In the case of **State v. Obagha**, the defendant aged 70 years, was convicted of manslaughter due to provocation; the court greatly considered his age and sentence him to 3 years imprisonment without hard labour. In the case of **State v. Olowolaiyemo**, the defendant who was a hunter mistakenly shot and killed his victim who was on top of a palm tree taking him for a monkey. Court greatly considered his age of about 70 years and poor health and sentenced him to 12 months imprisonment or fine of 200 pounds for the offence of manslaughter. Another interesting case is that of **Akambi Balogun v. COP**. The defendant was first offender, aged 75 years; he stole property worth (N100) one hundred naira from Nigerian Ports Authority. Court greatly considered his age and being first offender and made an order under **Section 435(1) of the Criminal Procedure Act** discharging him on condition that he entered into recognizance with one surety in the sum of N500 (Five Hundred Naira) only to go home and be of good behaviour for 2 years.

**First time Offender**

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** 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 81 of the Criminal Code Act**, 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.

**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”.

In conclusion, its vital to both the judge, the parties involved and the community at large that these guidelines are put into concideration when delivering a sentence so as to ensure a fair and just sentence because in the end its left to the judge to sentence in hes own discretion whist under the law

**REFERNCE**

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