Assignment Title: Sentencing

Course Title: Criminology II

Course Code: LPI 304

Criminal justice system in Nigeria commences in the commission of a crime and continues to subsequent intervention by the law and law enforcement agency that has the power to arrest, try, sentence and charge the accused accordingly. 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.

In the criminal trial, conviction and sentence come at the end of the entire procedure or process, the case of Ichi V. State, defined a sentence to be the judgement formally pronounced by the court or judge upon an accused after his conviction in the criminal prosecution.

A Sentence can also be defined as a definite order pronounced by a court of competent jurisdiction by the end of the criminal trial after the finding of guilt.

In all criminal trials, where a conviction is secured, the next logical step would be sentencing. Sentencing is a very broad field accommodating different approaches and ideas. It is an exercise of a discretionary power that is little guided in a country such as Nigeria. Hence the power presents sentencers with a very wide playing field and accommodates individual inclinations and approaches or solutions to the same problem.

Section 248 of criminal procedure act provides that if the court finds the accused person guilty, the court shall pass sentence on the accused or make an order to reserve judgement or adjourn the case to another date.

The criminal justice system in Nigeria starts to run with the commission of a crime and continues with subsequent interventions by agencies of the system with the arrest, arraignment, trial, sentencing and punishment of the offender. A criminal trial involves two processes both of which are important to the society and the offender. Firstly, there is the process of determining whether the defendant/accused did the act or made the omission alleged against him; if he did, then the second leg is that of sentencing him for his wrongdoing. In some legislation, the words sentence and judgments are used as if they were synonymous.

However in actual fact, the use of the word judgment is of a wider scope than the word sentence. In simple legal parlance therefore, the word “sentence is an order which is definite in its nature, type and quantum, whether it is made mandatory by law or it is fixed by the court or tribunal at its discretion (made at the conclusion of a criminal trial consequent upon finding of guilt).

A sentence of the court can be defined as a definite disposition order issued by a court or other competent tribunal against a person standing trial at the conclusion of a criminal trial. This is subsequent to the finding of guilt against him and must be an order which is definite in its nature, type and quantum. The Nigerian Criminal Code and the Penal Code as well as other offence-creating statutes specify the quantum of sentences, while the sentences themselves find their legitimacy in the criminal Procedure legislations applicable at the states and federal levels.

The quantum or degree of sentences is specified in the offence-creating laws and this is done with or without judicial discretion. For example, certain sentences can be made mandatory by law, leaving no discretion to the courts as is the case of death penalty for all the offences for which it is stipulated as the sentence or punishable with specified single terms of imprisonment. On the other hand, certain sentences are provided with specification of a range in each instance of a minimum term and a maximum term of imprisonment, while others just specify a statutory minimum punishment or a statutory maximum punishment.

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:

* Punishment
* Deterrence (general and specific)
* Rehabilitation
* Denunciation and
* Protection of the community.

These purposes overlap and none can be considered in isolation from the others when determining what an appropriate sentence is in a particular case. They are guide posts to the appropriate sentence but sometimes they point in different directions.

Sentencing guidelines are designed to indicate to judges the expected sanction for particular types of offences. They are intended to limit the sentencing discretion of judges and to reduce disparity among sentences given for similar offences. Although statutes provide a variety of sentencing options for particular crimes, guidelines attempt to direct the Judge to more specific actions that could be taken.

The Supreme Court set out six basic guidelines to help courts reach reasonable just and fair sentence:

* Nature of the Offence,
* Character/Nature of Offender,
* The Position of the Offender among his confederates,
* Rampancy of the offence,
* Statutory limitations,
* Concurrency of the sentence.

Common factors considered by judges include:

* Whether the offender is a "first-time" or repeat offender,
* Whether the offender was an accessory (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.
* Whether the offender is genuinely contrite or remorseful.

Here are some basic rules governing sentencing:

* Separate offences charged together must each receive a separate sentence but if they all form part of the same criminal action, the sentence will be concurrent;
* Where 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 fine;
* A fine must not be too heavy for the offender to pay;
* Separate fines imposed on different counts at the same trial are to be cumulative. But the aggregate must be within the Court’s jurisdiction;
* While the age of the offender, being a first offender, pleading guilty to the charge, may all sustain a plea in mitigation of sentences. Conversely, the fact of previous conviction, the prevalence of the offence, the seriousness of the offence, the non-repentant attitude of the offender and the adverse effect of the offence on the victim are all factors that aggravate sentence.

Penal statutes often provide for the maximum punishment for committing an offence; this maximum is not mandatory, the court has discretion to impose punishment that is less than the maximum, and the court is not bound to give reasons for doing so. The appellate court shall not interfere with the discretion of the court to impose punishment unless it is made a ground of appeal.

The type of Sentences that may be imposed on a convicted person includes:

**1.  Death penalty:** see Section 319 of the Criminal Code Act Cap. C38 Laws of the Federation of Nigeria, 2004; see also Section 220 of the Penal Law Cap 89 Laws of Northern Nigeria, 1963.

**2. Imprisonment:** this can be defined as a term of judicial sentence available for a convicted offender of adult age, involving incarceration in prison for either life or a specified period of time. A term of imprisonment may be imposed with or without hard labor. Where no specific order is made, it is deemed to be with hard labor. See Sections 377, 381 and 395 C.P.A. Concurrent and consecutive sentences are also considered where the accused had been previously convicted and sentenced, the new sentence may commence at the expiration of a current sentence previously imposed on the accused. In R v Savage 20 N.L.R. 55, it was held that in the situation above, the new term could not be ordered to commence at the expiration of more than one term of imprisonment. Where there are sentences in case of conviction of several offences at one trial and the sentence in respect of each offence is to run concurrently, the aggregate term of imprisonment shall not exceed 4 years or the limit of jurisdiction of the trial court whichever is greater. But under section 24(2) of the CPC, the court may impose a sentence twice its limit of jurisdiction to punish.

**3. Fines:** Sections 382 of the CPA and 23 of the CPC provide for the power of a court to impose fine in lieu of imprisonment. A fine is a payment of money ordered by a court from a person who has been found guilty of violating a law. It may be specified as the a punishment for an offence, usually a minor offence, but could also be specified and used as an option to imprisonment for major crimes or a complement to other punishments specified for such crimes. See section 129 Criminal Code, Section 389 C.P.A, Section.74. Penal code. In Price Control Board v Ezema (1982) 1 N.C.R. 7, it was held that even when the law creating an offence provides that the accused shall be ‘sentenced without option of fine’ the court still has discretion to impose a fine. But where the law provides for the minimum (not maximum) period of imprisonment to be imposed for the commission of an offence, the court cannot impose fine in lieu of imprisonment.

Assessment of fine- Section 382(2) & (3) of the CPA provides that:

* In the case of a high court, the amount of the fine shall be in the discretion of the court, and any term of imprisonment imposed in default of payment of the fine shall not exceed two years
* In the case of magistrate courts, the amount of the fine shall not exceed the limit of the scale provided for by the relevant law establishing the court or any other law. See Section 13 to 18 CPC and Goke v Police (1957) W.R.N.L.R. 80

Imprisonment in default of payment of fine- Section 392 of the C.P.A provides procedures a court must follow before an accused can be imprisoned in default of payment of fine:

* Issue a warrant of commitment
* Allow time (days of grace) for the payment of the fine
* Direct payment of the fine to be made by instalments
* Provide security either with or without sureties for the payment of the fine.

Under the C.P.C before an accused can be imprisoned in default of payment of fine, the court may order the attachment of his moveable and immovable properties. If the properties attached cannot satisfy the fine, the accused may be imprisoned subject to the limit contained in section 74 of the Penal Code.

**4. Caning or whipping:** Caning is another form of punishment which the courts are empowered to impose although it is important to note here that as a form of sentence, it has generally fallen into disuse. Caning may be considered for use as a punishment, or it may be in lieu of any punishment or it may be in addition to other punishment. The courts may pass a sentence of caning of up to twelve (12) strokes. Where a person is convicted of one or more offences at one trial, the total number of strokes awarded must not exceed 12.The number of strokes passed must be specified in the sentence.  The following categories of persons cannot be subjected to caning:

* Persons above the age of 45
* Women
* In eastern Nigeria, only a juvenile offender can be subjected to caning. See Section 386(1) C.P.A and Section 77 P.C.

**5. Forfeiture:** forfeiture may be more in the nature of an ancillary order made after conviction than a substantive sentence. It is usually imposed in the case of offences involving bribe, where the property which has changed hands in the course of commission of such an offence may be ordered to be forfeited to the state. See Section 19 of the Criminal code and Section 111 Penal Code.

**6. Hadi Lashing:** this is provided for only in the states of northern Nigeria under the C.P.C. It can only be inflicted on a Muslim. Hadi lashing can be inflicted only where the offender is guilty of any of the following:

* Adultery
* Drinking alcohol
* Defamation
* Injurious falsehood.

Hadi lashing is inflicted in an enclosed place and the public is permitted to watch. It is a kind of symbolic punishment meant to disgrace rather than inflict pain on the accused.

There are many different factors that can affect legal sentencing, including the type of crime, the criminal history of the convict, the circumstances of the crime and the rules of the legal system.

In addition we have two broad discretionary factors that affect the passing down of sentences by a court. These are mitigating factors which act to reduce the sentence to be handed down and aggravating factors which acts to increase the sentence or makes the mitigating factors inapplicable. Most sentencing decisions typically include the weighing of these aggravating and mitigating factors, insofar as they exist, in order to individualize the sentence with respect to the offender and the circumstances of the offence(s).

The following are therefore the objectives of sentencing:

* 1. To denounce unlawful conduct.
  2. To enable rehabilitation
  3. Separates offenders from society where necessary.