

**NAME: OLUFAYO ANNA OLAYEMI**

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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, defilement, ritual killing, extortion and obtaining property by false pretence. . Having found 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.

 Sentencing can be defined as “the judicial determination of a legal sanction to be imposed on a person found guilty of an offence”[[1]](#footnote-2). Sentencing is the process of a judge prescribing a punishment for an individual who has been found guilty of committing an offence. The Supreme Court in regards to sentencing has laid down six guidelines to aid other courts when sentencing, they include:

1. The Nature of the offence
2. Character/Nature of the offender
3. Position of the offender among its confederate
4. Rampancy of the offence
5. Statutory Limitation
6. Concurrency or Consecutiveness of the sentence.

**NATURE OF THE OFFENCE**

The nature of the offence plays a huge role in the sentencing as the seriousness and severity of the crime is considered before a punishment is prescribed to the offender. Also, factors that may aggravate or mitigate the sentence, factors which may aggravate the sentence may include the rampancy of the offence or if the offender is a habitual offender. For offences which are not so severe, the law prescribes the punishment and although the option to pay fines or be imprisoned is sometimes at the discretion of the judge, when it comes to imprisonment, the judge can exercise his discretion and sentence the offender to a certain time lesser than the number of months or years prescribed by the law but the judge cannot go above the prescribed number of months or years. Factors that may mitigate a sentence include provocation, in the Criminal Code[[2]](#footnote-3) it is recognized that provocation can serve as a mitigating factor for the offence of murder by reducing it manslaughter. In ***OLANIPEKUN v THE STATE[[3]](#footnote-4)*** a case of robbery with violence where the leader of the robbery asked for a member of the robbers to shoot a person and the robber complied but the gun did not go off, he was sentenced to five years in prison with hard labor.

In relation to the above, it is evident that the offences committed are serious offences and also, having committed a series of those offences, this will aggravate the offender’s sentence.

**CHARACTER/ NATURE OF THE OFFENDER**

The character of the offender is also considered before a sentence is imposed. Where the offender shows remorse and is making attempts to amend his wrongdoings or where the offender is a first time offender the court may take this into consideration and this may serve as a mitigating factor but in cases where the offender is a habitual offender. In ***R v ADEGBESIN[[4]](#footnote-5)*** the court increased a three year sentence to Six years because the defendant had been previously convicted of similar crimes in the past. In ***R v STATE***, the appellant has a previous conviction for defilement and the court increased his sentence from Eighteen months to Five years.

 Where an individual has a previous record for the commission of a previous offence, he is likely to attract a higher sentence as this behavior shows that the offender is not ready to stop committing crimes in the society and therefore this lack of repentance will lead the offender to be punished more.

When the aforesaid is applied to the scenario above, there is evidence that the punishment prescribed will be increased due to the recurrence of these crimes in the offender’s record

**POSITION OF THE OFFENDER AMONG ITS CONFEDERATE**

Usually, when an offence is committed by a group of people, the court differentiates the principal parties to the offence so as to ascertain their role in the offence and punish hem accordingly. Where the offender played a minor role, his sentence will be reduced but the leader of the crime who involves others is punished more.

In ***ENAHORO V THE QUEEN*[[5]](#footnote-6)** a case concerning treasonable felony, the Supreme court pointed out that it could not imagine a situation where a mere lieutenant received the same sentence as the leader and therefore reduced the sentence for twelve years to five years.

 Similarly, in ***STATE V KERENKU[[6]](#footnote-7)*** the court pointed out that although the appellant was not the leader, she played a major role in the commission of the offence and that must be taken into consideration.

This therefore shows that the court takes into consideration the principal offenders and punishes them accordingly, where an individual procures others to commit an offence for him, he is likely to be punished more. **Section 7 of the Criminal Code** provides the parties to an offence and how they can be differentiated, from the parties who aided and abetted to those who were aware of the commission of the offence, this allows the court to prescribe due punishment to parties responsible.

**RAMPANCY OF THE OFFENCE**

When sentencing, the prevalent nature of the crime I usually take into consideration. If in a particular society, a certain crime has a high recurrent rate then the punishment for that crime may be more severe so as to deter others from the commission of that crime. The prevalent nature of a crime is an aggravating factor when it comes to sentencing and the courts also will be reluctant to mitigate the punishment due to recurrent nature of the offence. In ***STATE v OWOLABI [[7]](#footnote-8)*** the Supreme Court expressed its views by saying “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” this proves that where an offence is rampant, in order to curb it, the punishment imposed may be harsh and the imposition may be very firm so as to deter others from committing that same crime.

The severity of an offence may sometimes be likened to the rampancy of an offence, in a case where the offence committed is despicable, the court may increase the sentence. In ***R v OZULOKE[[8]](#footnote-9)***, a twenty year jail sentence was given to a man as the offence he committed was considered to be revolting as he assaulted a little girl by attacking her with acid and leaving her unconscious.

**STATUTORY LIMITATIONS**

This is a statute which limits the rights of a plaintiff to file an action unless it is done within a specified time period after the occurrence which gives rise to the right to sue; the purpose of statutory limitations is to convict offenders on evidence that has not depreciated with time. When the stipulated time expires, the criminal is set free and cannot be prosecuted for that crime any more. Some offences like defilement of girls under 13 years must be brought under two years. Also, where a statute stipulates a term of imprisonment, the court is not allowed to exceed that number while sentencing, they have the right to go below but not above.

In ***MORDI v Commissioner of Police,*** the magistrate sentenced the defendant to two years imprisonment and on appeal to the high court, the sentence was increased to ten years and on another appeal to the Supreme Court, the Supreme Court stated that the sentence cannot be above the term stipulated by law and so they reduced the sentence back to two years. In ***AREMU V Inspector General of Police[[9]](#footnote-10),*** the magistrate court imposed a sentence for armed robbery and a five year sentence was imposed and on appeal to the high court, the sentence was increased from five years to ten years imprisonment. The Director of Public Prosecutions agreed that the High Court had no jurisdiction to increase the sentence to exceed the maximum sentence.

**CONCURRENCY OR CONSECUTIVENESS OF THE OFFENCE**

In cases where an individual commits multiple crimes and is convicted of those offences, there are laws governing how those sentences run. A concurrent sentence is a term of imprisonment equal to the length of the longest sentence, thus method of sentencing only applies when a defendant has been sentenced for two or more crimes while a consecutive sentence requires the defendant to serve the sentences one after the other. Where the convictions all stem out from the same type of offence, the judge is likely to order a concurrent sentence and this is evident in ***NWAFOR v STATE***, where the accused was convicted of offences arising from the same transaction and the court ordered that the sentences should run concurrently.

In conclusion, there is no hard and fast rule when it comes to sentencing because it may be at the judge’s discretion for an offender to pay a fine or be imprisoned but when the law stipulates the term for imprisonment, the above serve as guidelines for prescribing the suitable punishment to be imposed.

1. Landdian Sentencing Commission, 1987 [↑](#footnote-ref-2)
2. Section 318 Criminal Code (2004) [↑](#footnote-ref-3)
3. 3 LRN 204 (1979) [↑](#footnote-ref-4)
4. 6 WACA 179 (1939) [↑](#footnote-ref-5)
5. (1965) 1 All N.L.R. 125. [↑](#footnote-ref-6)
6. (1965). NMLR 125 [↑](#footnote-ref-7)
7. (1959) FSC 94 [↑](#footnote-ref-8)
8. (1965) NMLR 125 [↑](#footnote-ref-9)
9. (1965) LCN/1236 (SC) [↑](#footnote-ref-10)