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COLLEGE: LAW

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COURSE TITLE: NIGERIAN LEGAL SYSTEM II

QUESTION:

1.State clearly the procedure from arraignment to imposition of sentence in a criminal trial in the High Court. Comment on the remedy available to the accused after the imposition of sentence.

INRODUCTION:

Criminal prosecution develops in a series of stages, beginning with an arrest and ending at a point before, during or after trial. The majority of criminal cases terminate when a criminal defendant accepts a plea bargain offered by the prosecution. A criminal case begins with a police investigation of a complaint of criminal activity. The police prepare either an arrest report, if the accused person is arrested, or a case report, if the accused person is not arrested at the time of the complaint. The report is presented to the Prosecuting Attorney, who will review the case and decide whether to file criminal charges.

If the Prosecuting Attorney decides that there is enough evidence to file criminal charges, his office will prepare information outlining the charges and will submit this information in a probable cause affidavit containing the supporting facts to a judge. The judge will decide if there is probable cause to charge the individual. If probable cause is found, a warrant will be issued for the accused person's arrest, if he or she has not already been arrested, and the judge will set the appropriate bond amount that the person must pay in order to be released

from jail. All offenses are bondable except for murder. Bond is usually set according to a fixed formula that is specific to each county; however, bond can be made higher or lower depending on the accused person's past criminal record, the specific nature of the crime committed, and the individual's likelihood of being a flight risk.

ARRAIGNMENT:

After the judge finds probable cause and the individual is charged, the individual, now called a Defendant, will have an arraignment with the judge. The arraignment is usually set within 48 hours after a person is charged. At the arraignment, the judge will automatically enter a plea of not guilty and advise the defendant of his or her rights as an accused person, such as the right to an attorney. The judge will appoint an attorney, a public defender, if the defendant cannot afford one. Normally, the judge will then set another hearing, often a week later, during which the defendant will appear with his or her attorney in front of the Superior Court Judge who will hear the case.

section 215 of the Criminal Procedue Act

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APPEARANCE HEARING

At the initial appearance hearing, when the defendant first appears with his or her attorney, the judge will usually set a plea deadline, a record date and a trial date. The Plea Deadline is the date by which the prosecutor and defendant must agree on conditions of a plea agreement, if there will be one. The Record Date is set approximately a week to three weeks before the trial date. This is the date on which the prosecution and the defense attorney will let the judge know if they will need to go to trial.

PLEA AGREEMENT

A case may never reach trial, for several possible reasons. The most common

reason is that a plea agreement is reached between the prosecuting attorney and the defense attorney. In a plea agreement, the defendant will plead guilty to some or all of the charges, rather than taking the case to trial. Plea agreements can vary widely. If the prosecutor and defense attorney agree on a plea, then the case will be set for a plea date.

At the plea date, the judge will advise the defendant of all of his or her constitutional rights and confirm whether the defendant is willing to accept the plea agreement. If so, the defendant will admit to the offense and to the particulars involved in the offense. After the judge concludes the hearing on the plea agreement, he may decide to accept the plea agreement or take the plea agreement under advisement. It is important to understand that although the judge may accept the defendant's guilty plea, the judge is not obligated to accept the terms of the plea agreement between the prosecution and the defense. In his or her discretion, a judge may, in fact, reject a plea agreement.

TRIAL

If the prosecuting attorney does not offer a plea agreement or the defendant does not accept the plea agreement, then the case will proceed to trial. The defendant generally decides whether to choose a jury trial or a bench trial (judge only). It is important to understand that although a case may be set for trial on a particular date, it may not actually go to trial on that day, even if the prosecutor and defense attorney intend to go to trial at that time. As a rule, judges will set a number of cases for trial on the same day. This is done with the idea that it is difficult to know in advance which cases will go to trial and which ones will plead. As such, a case may be set for trial, yet be bumped by another case that was previously set for trial on the same day and that does, in fact, go to trial.

If such a conflict arises, a judge will usually set a new trial date immediately, and may set a new record date as well. It is often difficult for victims when a trial date is continued because of conflicts with other trials. It is important that victims brace themselves for this likelihood. It is the rule, rather than the exception, that

cases are continued because of scheduling conflicts or continuances requested by either the prosecutor or the defendant.

VOIRE DIRE (JURY SELECTION)

The length of a trial can range anywhere from a few hours to a few weeks depending on the severity and complexity of the case and the offenses. On the trial date, if the defendant has requested a jury trial, the prosecutor and defense attorney will conduct voir dire, a Latin term that refers to the jury selection process. This process can last anywhere from a couple of hours to the entire first day of the trial. The attorneys ask questions of potential jurors to try to determine which jurors they want to serve in the case. Each side is allowed to strike, or refuse to accept, potential jurors in one of two ways. The first kind of strike is a peremptory strike, in which the attorney (either the prosecutor or the defense) does not have to justify why he or she does not want the juror to serve. Each side has a limited number of peremptory strikes that can be used during the voir dire process.

The second kind of strike is a strike for cause, in which the attorney must explain to the judge why he or she believes that the juror is inappropriate for the case. Each side has an unlimited number of strikes for cause. For misdemeanor and D-felony trials, juries consist of six jurors plus alternates; for A, B, and C felony trials and murder trials, juries consist of twelve jurors plus alternates. There is no need for victims to be present during the jury selection process; in fact, there is usually so little available space in the courtroom during jury selection that the victims cannot sit in the courtroom and will have to remain outside. Victims who wish to attend a jury trial should plan on waiting to arrive at the courthouse until late on the first day of the trial or early on the second day. You should talk to the prosecutor or victim advocate who is involved with the trial to find out when you should arrive.

FIRST PHASE OF TRIAL

After the jury is selected, the trial begins. The burden of proof is on the State, which is represented by the prosecutor, therefore, the State is allowed to present arguments and its case first, and is also allowed time to rebut arguments or evidence presented by the defense. The defendant has no burden of proof, therefore, the defendant is not required to present evidence or witnesses, nor does he or she even have to testify on his or her own behalf. During the first phase of the trial, each side will give its opening statement. Generally, in opening statements, each attorney will outline his or her case, telling the jury or judge what they can expect to hear during the presentation of the case-in-chief.

SECOND PHASE OF TRIAL

The second phase of the trial is the evidence phase, during which each side presents its case-in-chief. The case-in-chief is all of the evidence and witness testimony presented by each side. During the case-in-chief, each attorney will conduct a direct examination of each of his or her witnesses. After direct examination is complete, cross-examination will begin, in which the witness is questioned by the opposing attorney. At the end of cross-examination, the side that called the witness will be allowed time for "re-direct" examination in order to clarify any testimony from direct or cross-examination.

In the state of Indiana, after "redirect," the judge is permitted to take questions for the witness from the jurors. These questions are written down, given to the bailiff, and presented to the judge. The judge will consult with both attorneys to decide if the question can be asked of the witness. Questions will only be asked if the witness can answer it completely from his or her knowledge of the case. For example, a witness cannot answer any questions about what a person may have been thinking. After each side has presented its case-in-chief and has rested, the evidence phase of the trial is complete.

3RD PHASE OF TRIAL

The final phase of the trial is the closing argument phase. Each attorney has a

specified amount of time (determined by the judge during the trial) to speak to the jury about why they should vote for a guilty or not guilty verdict. The prosecutor speaks first, and has the right to reserve some of his or her time to speak after the defense attorney has finished his or her argument.

JURY DELIBERATION

When the closing arguments are complete, the judge will read instructions to the jury about how they conduct deliberations and how they must arrive at a verdict. The jury is then dismissed to deliberate until they have arrived at a verdict; this process can take minutes, hours, or even days. To find a defendant guilty of the charges, all jurors must believe in his or her guilt beyond a reasonable doubt. All verdicts must be unanimous. If the jury cannot agree on a verdict, and they feel that no amount of deliberations will change the disagreement, they must come back to court and tell the judge that they are a "hung jury." If there is a hung jury, then the process will start over (the prosecutor must decide if he or she wants to re-try the case and go forward with another trial at a later date).

VERDICT

If an acquittal (or not-guilty verdict) is returned, then the trial is complete and the defendant will be released. Defendants cannot be re-tried after a not guilty verdict due to a constitutional protection called "double jeopardy," which means that a person cannot be tried for the same crime twice. If a conviction (or guilty verdict) is returned, then the judge will set a sentencing date (usually about 30 days from the end of the trial) and the defendant will remain in custody.

PRE-SENTENCE REPORT

Before the sentencing date, the case will be assigned to an officer of the Adult Probation Department who will prepare a Pre-Sentence Report. This report includes a great deal of information ranging from the defendant's background, to his or her criminal history, to the facts of the case. Included in the report is a Victim Impact Statement. The probation officer will contact all victims in the

case and guide them through making statements to the court about how this crime has had an impact on their lives. The statement can be written and included in the report, or it can be a statement that is given to the judge at the sentencing hearing by standing up in court and speaking to the judge. Victims may choose to give both a written and an oral statement in the case.

SENTENCE HEARING

At the sentencing hearing, the judge will use the information in the Pre-Sentence Report to decide whether the facts of the case and the defendant's criminal history call for a harsher or a more lenient sentence. He or she will listen to the victims who want to speak and will hear arguments by the prosecutor and the defense attorney. The attorneys will discuss aggravating factors (facts about the case that tend to make the crime more severe) and mitigating factors (facts about the case that tend to make the crime less severe). The judge may impose a sentence at the hearing, or may take the matter under advisement, which means that he or she will think about the facts and arguments that have been presented to him or her and give his or her decision later.

Sentences can vary widely depending on the kind of crime committed, the criminal history of the defendant, the facts of the case, and the information submitted in the Pre-Sentence Report. Victims should discuss the possible sentences with the prosecutor handling their case so that they are prepared for what the outcome of the sentencing hearing may be.

REMEDIES AVAILABLE TO THE ACCUSED AFTER IMPOSITION OF SENTENCE

If the defendant is unsatisfied with the judgement pronounced by the High Court, the party can decide to file an appel to the Supreme Court within 14 days after the judgement given. The purpose of the appeal is to ensure proper interpretation of thr constitution and the law. There are some available grounds in which this apppeal is limited to and they are:

i. A violation of the constitution or an error in interpretation or application of the constitution

ii. Contradiction with supreme Court precedent

iii. Contradiction with High court precedent when no supreme Court pecedent exists.

The Supreme Court is authorized at its discretion, to reverse lower court decisions on the following grounds:

i. There is a serious error in interpretation or application of law

ii. The degree of sentence is extremely unjust.

iii. There is a grave fact-finding error which is material to the judgement

iv. There is any reason which would support re-opening of procedures.

v. The sentenced punishmentt has been abolished or changed or for which the general amnesty has been proclaimed.

However unless one of the courts listed in the Role of the Supreme Court Section has made an order affecting you, the defendant will not be able to take His/Her case to the Supreme Court. futhermore, not all orders made by the lower courts can be appealed to the supreme court. Only after this court has rfused to grant the defendant the permission to appeal against its judgement, can the defendant then apply to the supreme court.

In most cases, to bring an appeal to the supreme court, the defendant must apply first to the court which handed down the judgement to ask for permission to appeal. The Supreme Court only examines record of the case and never examines witnesses or defendants although the Supreme Court may hear the arguement of the parties involved. When the Supreme Court concludes that there is no ground for reversal, it dismisses the appeal.

2.Comment on the various methods by which civil proceedings may be commenced in the High Court.

SUMMONS:

An order by a court that a person attend at a particular court at a stated time on a particular date.

There are 2 modes of commencing civil proceedings in Nigerian courts

i. By Writ of Summons

ii. By Originating Summons

WRIT OF SUMMONS:

The Writ of Summons (WOS) is one of the two modes used in commencing a civil action against a person. It is a formal document addressed to the defendant requiring him to appear before the court if he/she wishes to defend himself against the plaintiff's claim. A writ is usually accompanied by an Endorsement of the Claim or a Statement of Claim so that the defendant is made aware of the claim against him/her. It is also a type of writ used to start a civil case in the High Court. This has been known as a 'claim form' since April 1999.

ORIGINATING SUMMONS:

Originating Summons is one of the two modes in commencing a civil action.This is a summons that sets out the questions the court is being asked to settle. When the facts in a case are not disputed, but the interpretation of the law or of the documents needs to be resolved, an originating summons is prepared.An action is commenced by an Originating Summons when:

i. it is required by a statute or

ii. a dispute, which is concerned with matters of law, is unlikely to be any substantial dispute of fact.

An Originating Summons may be in Inter partes or Ex-parte of the Rules of Court.Originating Summons is heard based on affidavits filed in support.

Originating Summons cases are heard by registrars or judges in chambers or in open Court. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support of or in opposition to the Originating Summons. Witnesses may be called to give testimony and pre-trial conferences may or may not be conducted.

An application can be made to convert an Originating Summons into a Writ at any stage of proceedings. Alternatively, the Registrar or Judge can decide to convert an Originating Summons into a Writ without any application from the parties. Once the decision to convert has been made, the steps relating to a Writ applies. The Registry will assign a new Suit Number to the proceedings and a pre-trial conference will be called for the service of the Statement of Claim.

REFERENCE :

www.elitigation.sg

WWW.justia.com

WWW.sjcindiana.com