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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 Semi 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 pretense. 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?

ANSWER

To begin with, what is sentencing?

**Meaning of Sentence**

The term ‘sentence’ may denote the action of a court of criminal jurisdiction formally declaring an accused the legal consequences of 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 trial. A sentence is the pronouncement by the Court, upon the accused after his conviction in criminal prosecution, imposing the punishment to be inflicted. It is regarded as the judgment that a Court finally pronounces after finding the defendant guilty or the punishment imposed on a criminal wrongdoer. Whereas, sentencing is a post-conviction process of ascertaining and imposing penalties on offenders it is the final stage of the trial process when the Court has found the defendant guilty or the defendant has pleaded guilty, the judge then decides on a sentence appropriate for the offence.

Sentencing Guidelines

It is noteworthy that the Federal Capital Territory Judiciary took a leap forward in codifying sentencing guidelines and principles in order to assist judges and Magistrates in the sentencing proceedings after conviction. The lofty initiative is known as the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016, The guidelines was enacted by Hon. Justice Ishaq Bello, the Chief Judge of the High Court of the FCT on the 19th October, 2016.

Part 1 of the sentencing guidelines resonates the objectives, guiding principles and scope of the Guidelines, Section 1 provides thus:

“The objective of this practice direction is to set out the procedure for sentencing of corruption related cases, offences against the person or property, homicide related offences, offences against the state, offences against public order and offences against morality, for the purpose of ensuring uniformity in sentencing to the provision of Sections 416 and 311 of the Administration of Criminal Justice Act, 2015”

The rationales behind the application of the procedural steps prescribed in the guidelines are of immense assistance to judges to operate as parameters or templates that should be taken into consideration during sentencing proceedings. They substantially replicate the considerations prescribed in ACJA for sentencing in respect of the under listed:

A) Corruption and related offences

b) Offences against person

c) Offences against person

d) Homicide related offences

e) Offences against public order

f) Offences against morality and

g) Offences against the state.

The sentencing guidelines are divided into parts, each contains the factors and principles that applicable at the post-conviction stage of proceedings. Every part is tailored to the respective offence noted above. The sentencing guidelines encompasses to the rules of practice and procedure in relation to sentencing after an offender has been convicted for any of the offences; to wit, to corruption, homicide, offences against the person, property, homicide related offences, public order, offence against the state and morality.

The sentencing guideline, is a comprehensive template that will guide the Court in arriving at the sentence to be imposed. Considerations such as the aggravating factors which ought to be considered in sentencing, previous convictions, multiplicity of offences committed, steps taken to prevent victims or witnesses from supporting the investigation or testifying, concealment, disposal or destruction of evidence, frustrating or delaying prosecution etc. whilst the mitigating factors, such as the absence of any previous conviction, remorse of the offender, evidence of restitution, evidence of good character, certified depilating medical condition or assistance given by the offender during prosecution are all factored as parameters towards assisting the judge in the imposition of sentence.

Other consideration in the sentencing process prescribed by the guideline is the stage at which a plea of guilty was made by the convict. It is also worthy of note that the sentencing guideline incorporates the “totality principle” amongst the factors applied in sentencing. This principle envisages a situation where the convict is being sentenced for more than one offence or where he is serving a sentence, the Court shall consider whether the total sentence is just and appropriate to the offending behavior, the principle is also applicable to cases where the offender is convicted for multiple offences, the judge, can, in sentencing order that the conviction should run concurrently or consecutively, Section 17 of the Interpretation Act shall also be considered by the Judge in determining whether the term of imprisonment imposed shall be with or without hard labour. The elaborate sentencing guidelines are recommended for every judge in the determination of the pronouncement he is to make by way of confiscation, forfeiture, compensation, restitution or other ancillary orders in accordance with the provisions of the applicable laws under which the offender is to be convicted.

The sentencing guideline is a veritable tool for assisting the Court in the sentencing process, it is hoped that all the States Judiciaries in the Federation will avail themselves of sentencing guideline. Hopefully it should curtail disparity in sentencing.

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.

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 courts to more specific actions that could be taken. The Court of Appeal per Saulawa holds as follows:

“It is trite that due to the complex and rather controversial nature thereof, sentencing is arguably the most important area of justice system. Ironically it is the most incoherent. Regrettably, very often than not, sentences are passed by trial courts not on the basis of established principles and rules but in accordance sentimental disposition of judges. The main reason for the rudimentary state of sentencing law is the absence of a rationale for punishment. If we do not know why punishment is justified and what is sought to be achieved by it, there is no prospect of developing meaningful sentencing, objectives and principles.”

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In this regard therefore, a court that imposes a sentence shall take into consideration the following principles governing sentencing at the trial court;

1. 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. The Court of Appeal per Ariwoola JCA holds thus:” One of the principles of sentencing is that where the counts relate to one act or set of facts, sentences should not be ordered to run consecutively. Where there are several counts on the same information, separate verdicts must be delivered in respect of the several counts. In other words, a trial court must pronounce its sentences separately on all counts of the offences in a case, otherwise the entire proceedings is certainly liable to being set aside on appeal.” Where consecutive sentences are however imposed, the combined sentence should not be unduly long or harsh.’

2. A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender

3. A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances

4. An offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances

5. All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of young and vulnerable offenders

6. 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.

7. The court must put into consideration some factors like the age of the convicted person whether the accused is a first offender, the seriousness of the offence, the prevalence of the particular offence, the non-repentant attitude of the offender and the adverse effect of the offence on the victim to determine whether sentence may be mitigated or aggravated

Conclusion

In conclusion, Evans will be punished and sentenced in accordance with the guidelines above and based on his circumstances as seen above he will be severely punished.

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