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QUESTION: Evans, a notorious kidnap kingpin and armed robber, who has 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 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?

**ABSTRACT**

*In previous times, the art of sentencing primarily relied on the crime committed. Nonetheless, in order to encourage justice and fairness, new development in law proposes key guidelines considered before conviction of the guilty party. This exposition aims at dissecting the factors instrumental in aiding the court for fair sentencing. Readers are enlightened on the necessary measures employed by courts to reach a satisfied sentence.*

**INTRODUCTION**

The Nigerian criminal justice system, in a bid to facilitate adequate dispensation of justice, is duly represented through the court in alignment with the judicial arm of government. Among the multiple tasks assigned to the court, a principal duty is the due punishment of offenders or criminals who contravene the law. The prescription of punishment for convicted persons is achieved through sentencing.

Likewise other major topics of law, the concept of sentencing is multi-dimensional and broad, such that there is no precise and unified definition befitting it. Nonetheless, jurists through legislations and other articles of law have attained to develop some definitions to understand this concept of law. As defined by the Canadian Sentencing Commission in 1987, sentencing is the judicial determination of legal sanctions to be imposed on a person found guilty of an offence. Such sanctions are deliberated under law and they are given upon admission of guilt of an offence, meaning that only a guilty party can suffer these sanctions.

In Ichi v State (1996) 9 NWLR 470 pg 84 pt 89, it was held that a sentence is the judgement formally pronounced by the court or judge upon an accused person after his conclusion in a criminal prosecution imposing the punishment to be inflicted. The legal consequence, in this case is the result of the accused person’s actions when found guilty of the offence committed. This implies that true sentencing can only happen where the defendant is guilty, as it is necessary for any punishment to be given. Also, this is duly done in a court setting, by a judge or Magistrate. In the same vein, sentencing is a definite order pronounced by the court of competent jurisdiction at the end of a criminal trial, after the finding of guilt against the accused person. The defendant is said to have been found guilty after a prosecution process by a presiding judge, who then formally declares judgement or conviction of the offender.

Before sentencing takes place, there has to be a commission of crime, such that the accused is apprehended before proven guilty by a judge or Magistrate. This emphasizes on how fundamental sentencing is, as it deals with the prescription of punishment of convicted persons. It serves a dual purpose in the sense that, while punishing a law breaker, it allows for proper dispensation of justice and fairness, which is the major function of the court in conjunction with the law. Section 248 of the Criminal Procedure Act provides accordingly that if the court finds the accused guilty, the court shall pass sentence on the accused or make an order or reserve judgement and adjourn the case to some future day. This proves the legal backing that the law is in agreement with the concept of sentencing in court.

**PURPOSE OF SENTENCING**

In the long run, all parts or elements of law aim in the direction of one collective goal, which is the betterment of a just and fair society, as well as a criminal justice system. Sentencing is not excused from this objective, as it concentrates fully on promoting and creating a peaceful and law abiding society.

First, the purpose of sentencing is to denounce unlawful conduct. There is a legal mantra that “where there is no law, there is no sin”. This embodies the importance of law, as well as sentencing. For order to be established, certain things are to be put in place, which is no different in this case. Actions and activities that contradict the law cannot be condoned for order to prevail. Hence, sentencing is useful in limiting these illegal acts and offences from taking place through adequate sanctioning. Where there are legal consequences for any obstruction of the law, there would unlikely be any defaulter, which is a primary role of sentencing.

Second, the purpose of sentencing is to deter the offender and potential offenders from continuous crime commission. One of the bridges of punishment is deterrence, such that it eliminates prospective offenders from committing crime due to the imminent fear of punishment. In the same light, sentencing goes a long way to limit crime recurrence and potential incidence of crime, as the prescription of punishment will enforce good behaviour on past offenders who do not wish to be punished again, likewise future offenders who feel threatened by possible punishment.

Third, the purpose of sentencing is to separate the offenders from society when necessary. Though all persons are equal under the law and are recognized as citizens nonetheless, it is important that we focus on the safety of the larger whole. Criminals are law breakers and exposing them to the society would mean endangering the lives of other citizens, who may become victims in the future if such criminals are not restrained. Hence, sentencing is necessary to create a divide between criminals and the rest of the society, not for stigmatization or unnecessary ostracism, but for safety precautions, to eliminate any haphazard event.

Fourth, the purpose of sentencing is to assist rehabilitating offenders. It is no secret in assessing the criminal justice system that crime commission occurs for numerous reasons as every criminal is different. This is why different punishments have been introduced to suit the crime committed. Sentencing does not only punish the offender, it rehabilitates the offender by fixing or assisting in reforming such offenders from the systematized criminal lifestyle already programmed to memory. Criminals are given time to assess themselves and the consequences of their actions, which in the process, helps them to a new life of change, to become better persons in hopes of being accepted into society.

**GUIDELINES FOR SENTENCING**

As expressed in Mohammed v Olawuyi (1993) 4 WLR 288 pg 348 pt 401 (a-b), when a court of competent jurisdiction identifies an accused person as guilty of the commission of the stated crime, it is within the discretion of the presiding judge to impose sentence, however suitable. Notwithstanding, there are guidelines employed by the Supreme Court to aid other courts in reaching a fair sentence.

* Nature of the offence
* Character or nature of the offender
* Position of the offender among his confederates
* Rampancy of the offence
* Statutory limitation
* Concurrency of the sentence

**NATURE OF THE OFFENCE**

Before the conviction of an accused person takes place, one of the factors considered is the nature of the offence. This factor, in no way, undermines the requirement that there has to be a commission or omission of an act constituting a crime. It focuses on the nature of the offence as it plays a major role in dictating the extent of punishment. Though not articulated in our Nigerian law, foreign legislation has encouraged the need to consider the nature of the offence. Section 16(2)(a) provides that the court must take into account some matters relevant and known to the court, such as “the nature and circumstances of the offence”. The court, through the presiding judge evaluates the seriousness of the offence to aid in prescribing adequate punishment for the offender, such that the punishment is not above or below the gravity of the offence. Where there is any fault, it is duly adjusted.

In Adeye and ors. v State, a case of robbery and violence tried by the High Court of the Western State, the court imposed a sentence of 18 years imprisonment on the accused. On appeal, the western State Appeal Court reduced the sentence to 10 years. The accused person, yet unsatisfied, appealed to the Supreme Court, which reinstated the trial judgement of 18 years with three strokes of cane. It should be put into record that under the Section 1 of the Robbery and Firearms (Special Provisions) Act, any person who commits the offence of robbery shall upon trial and conviction be sentenced to imprisonment for not less than 21 years. The Supreme Court stated that the sentence of the appeal court was too lenient in comparison to the seriousness of the offence.

Similarly, in Adesanya v The Queen (1964) 1 All NLR 38, a case of forgery was examined. Following Section 467 of the Criminal Code, the offence of forgery in general is a felony, punishable with 3 years imprisonment excepts in special cases where other punishments are used. In the highlighted case of interest, the accused person, having committed the offence of forgery, was sentenced to pay fine. On appeal, the court held that that payment of fine was too small a token for the offence of forgery and the punishment of imprisonment was reinstated.

In other cases, the nature of the offence may help lessen the punishment, rather than alleviate it. For instance, manslaughter as an unintended homicide would conjure lesser punishment than a provocation murder, though both charges involve killing people. The only distinguishing factor is the nature of the offence. In Idoye v State, the accused person drove his car at night without headlights in a hilltop area. In the process, he killed a pedestrian and was sentenced to 5 years imprisonment by the High Court in addition to a 10 year ban from driving. On appeal, the Supreme Court reduced the sentence to 18 months and a 5 year ban from driving. Similarly, in Mohammed v COP, the accused person who had never driven in his life, hopped into the car and killed some pedestrians. He was sentenced to 3 years imprisonment and 10 years disqualification from driving. On appeal, the sentence was mitigated to 18 months and 5 years disqualification from driving.

**CHARACTER OR NATURE OF THE OFFENDER**

A person’s character often times is not classified as evidence that can be used in court. However, in crucial cases of sentencing where the character of the offender is instrumental, it is admissible in court. It can heighten, as well as mitigate the sentence. In Adeleye v Ajibode, the appellant’s character played a significant in the restoration of a heavier punishment as opposed to the standard. There are similar examples on this matter, for example, in R v State, the appellant had been previously convicted for defilement. This led the court to increase the sentence from 18 months to 5 years imprisonment. Also, in R v Bangaza, the appellants were charged for a deliberate assault on the deceased with a heavy stick as a form of retaliation for a past event. They were charged, tried and convicted of murder. After the murder in 1950, the appellants ran away to a place in Borno. They surrendered themselves in 1959. At the time fot eh offence, the appellants were under 17 years but old enough to be criminally responsible. By the time they were convicted, they were 17 years and more leading to their sentence to death. A dissenting judgement by Adenoma CJN proposed that Section 68 of the Criminal Procedure Act evaluates that the age of the offender at the time of conviction is material and the appellants cannot invoke the Act but the responsible authorities will give such weight as it deems fit.

In essence, despite the controversial nature on accepting the character of the offender as admissible evidence, it is still a requirement considered in reaching a fair sentence as it focuses more on the criminal, rather than the crime, which the law does not often give room for.

**POSITION OF THE OFFENDER AMONG HIS CONFEDERATES**

It is necessary that in the commission of a crime, all assisting persons are charged. That is why the law provides a variety of persons, though including principal offenders, that can be charged for the commission of a crime. The offender in the midst of his participants, in the case of a group crime such as vandalism, may have played a major or minor role in the commission of the crime, nonetheless still an accessory to the crime. In Enahoro v The Queen, a case of treasonable felony, the appellant was sentenced to 15 years imprisonment by the High Court. The Supreme Court reduced the sentence to 5 years, indicating that the lieutenant should not be charged more than the leader. This presupposes that the progenitor of the crime should be punished more than a minor player, emphasizing that the position of the offender among his confederates is important in fair sentencing. In other cases, the case may be reversed, in The Queen v Mohammed and ors, the first appellant was given a maximum sentence of 8 years imprisonment as the leader. The other appellant was given a sentence of 5 years imprisonment.

This overrules the importance of the offender’s participation in the crime before sentencing can take place as opposed to the standard punishment once proven guilty so as to allow a justiciable system of government.

**RAMPANCY OF THE OFFENCE**

Where an offence is said to be committed more often than others, the rampant nature of the offence may influence the court in sentencing. In most cases, the guilty party is charged with a greater sentence to curb the occurrence of such crime in the society. In State v Michael Ayegbeni, the court identified that robbery on roads in recent times had been on the increase and disturbing so much that the parties were sentenced to 20 years imprisonment. In other cases where there is low rampancy of the offence, the convicted person’s sentence may be mitigated. In Onyinokwu v COP, the offender was detained for causing harm; after an unsuccessful escape, he was charged by lawful authority for attempted escape. Although he was later discharged and acquitted, the court expressed that the 3 year imprisonment earlier imposed did not show adequate consideration as the offence was not prevalent in that community.

This underlines the essence of rampancy of the offence in the conviction of an offender, with necessity to the suitable punishment.

**STATUTORY LIMITATIONS**

This provides a sort of limit for which a crime can run through as a criminal, offence. Once the statute has exceeded the time limit, the criminal is set free and acquitted of the charges against him. This however is not guaranteed for all crimes. For instance, Section 48 of the Criminal Code connotes that nobody can be tried for the offence of treason and other related offences unless prosecution commences within two years after the offence is committed. Though uncommon in criminal cases as opposed to civil torts, an accused may resort to this guideline in aiding a fair sentencing.

Also, it may be recognized as a law that sets a limit for the number of years an accused person may be sentenced for the commission of crime. This sets a bar for punishment such that it cannot be exceeded. In The Queen v Eyo and ors, a case of unlawful assembly, the High Court sentenced them to 5 years imprisonment. On appeal, the Supreme Court reduced the sentence to 3 years as that was the maximum sentence stated under law.

**CONCURRENCY OF THE SENTENCE**

This follows the presumed law that emphasizes that where a person is charged and found guilty of more than one offence, the sentence should run concurrently especially if they are of the same nature. In Nwafor v State, the accused person was found guilty for store breaking and possession of breaking instruments, which are similar acts. The Supreme Court held that both sentences should run concurrently because they are of the same nature. Nonetheless, this is at the discretion of a court especially where one sentence may surpass the other, the court would then decide which the convicted person may serve.

**CONCLUSION**

In a bid to establish the general purpose of sentencing to the Nigerian criminal justice system, this paper has satisfied the provision of the necessary guidelines aiding courts in fair sentencing. When these factors are examined and considered duly before sentencing, the dispensation of justice and fairness is well served as opposed to a robotic lay of judgement based on the mechanized textbook-knowledge of a crime.