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 LMS ASSIGNMENT

Question: What are the things that will guide you in sentencing Evans having regard to the guidelines laid down by the Supreme Court ? In the given scenario.

***ABSTRACT***

*The criminal justice system comes after the commission of a crime with the intervention of law enforcement agencies and continues to the trial and sentencing and punishment of the offender. These  processes are governed by different laws and legislations. Sentencing is a broad field accommodating different ideas, approaches and theories. This paper discussed the meaning of sentencing and the different  principles guiding sentencing both at the trial court and at the appeal court. This work went further to look into the discretionary powers of the courts in sentencing, the extent of these powers and to what limits the courts can go with these powers. Most importantly, this paper further discussed the different approaches, theories and ideas of sentencing.*

**INTRODUCTION**

The criminal justice system in Nigeria commences after the commission of a crime with subsequent intervention of the law enforcement agencies that have the power of arrest, arraignment and trial of the suspect. After the trial, the suspect is either found not guilty or guilty of the alleged charge and thereafter comes conviction and sentencing. This means that sentencing is the last phase of a criminal trial. A criminal trial involves the state, the society and the offender who commits the act. The process of determining whether the accused did the act or  committed the omission alleged against him depends on sentencing him for the alleged act he committed or the omission. Criminal prosecution aims at the conviction of the accused person. The conviction goes with sentencing to some form of punishment or sanction pronounced by the trial court. Such sanctions could take any or a combination of many forms like imprisonment, fine, caning, haddi-lashing, corporal or capital punishment, forfeiture etc. Sentencing is one of the several ways which together comprise what is often referred to as Criminal Justice system

**What is sentencing** ?

Sentencing:

 this is the judicial determination of a legal sanction to be imposed on a person found guilty of an offence. It is the pronouncement by a court upon the accused person, after his conviction in criminal trial, imposing punishment to be inflicted. Sentencing also means the prescription of a particular  punishment by a court to someone convicted of a crime. Thus after an accused person has been found guilty during trial or prosecution process, the court then enters judgment of conviction and thereafter come. Sentencing is the prescription of punishment by the court to someone convicted of a crime.

The condition sentencing commission in 1987 defined sentencing as “the judicial determination of legal sanctions to be imposed on the person found guilty of an offense”

It was also defined in the case if **ICHI V. STATE** as “a judgement formerly pronounced in the court by a judge upon an accused person after his conviction in a criminal prosecution, imposing a punishment to be convicted.

**Section 248 of CPA** provides that if the court finds the accused person guilty, the court shall pass sentence on the accused person or make an order to reset be judgement.

The various types of sentencing depends on a particular crime it attracts and is contained in the CPA, CC and PC.

The fundamental purpose of sentencing

a. To denounce unlawful conducts

b. To deter the offender and other persons from committing offenses

c. To separate offenders from the society

d. To assist in rehabilitating offenders when necessary

e. To promote a sense of responsibility in offenders and acknowledgement of the harm done to the community and victims.

How does the court arrive at a reasonable sentence?

The Supreme Court has laid down six(6) basic guidelines to the court in reaching a reasonable, just and fair sentence;

 i. Nature of the offense

ii. Character or nature of the offender

iii. Position of the offender amongst the confederates

iv. The rampancy of the offence

v. Statutory limitations

vi. Concurrency of the sentence

**\*Nature of the offence**

As a principal of law and practice, the nature of the offence committed by an accused person(defendant) of which he has been found guilty of, goes a long way in dictating or determining the extent of his punishment. The law is clear, that a person cannot be found guilty of an offence which as at the time being committed does not constitute a crime in any written law and it’s punishments clearly stated. As stated in **ADEYE OTHERS V. STATE**, a case of robbery by violence, tried by the High Court of a western state. The court imposed a sentence of 18years imprisonment on the accused person. On Appeal the western state appeal court reduced the sentence to 10years. The accused person unsatisfied with the decision of the appeal court, yet appealed to the Supreme Court. The Supreme Court reinstated the 18years with 3 strokes of the cane. The Supreme Court stated that the sentence of the appeal was too lenient because of the seriousness of the offence.

The seriousness of the offence, it’s nature, the gravity, makes forgery of court processes grievous. **See Adesanya V. The Queen 1964**. The court held that the payment of fine was too small a punishment for the grievous offence of forgery hence imprisonment. See also **Etim V. The Queen.**

In cases of manslaughter that is unintended homicide, either by provocation murder or automobile accident. In the cases of automobile homicide there is a tendency of the court to impose slight penalties or punishments as opposed to provocation murder. In **Idoye v. The State;** the Supreme Court reduced the sentence to two and the half years imprisonments and five years disqualification from driving. Similarly in Mohammed V. COP, the Supreme Court also reduced the sentence.

In contrast, In provocation manslaughter, there is a tendency to impose an average time of 10 years in **Adekanmi V.The State** , the court upheld his defence life provocation to uphold the term of 18years imprisonment.

Perhaps, the disparity between auto crash cases and manslaughter provocation cases can be traced to class differentiation. In that auto crash cases are more likely to occur among members of upper/middle class, why those in manslaughter provocation are likely to be of the lower/poor class and illiterates.

Provocation is the statutory recognized defence(criminal defence) which serves as a mitigating factor and reduced cases of murder to manslaughter. The maximum sentence for manslaughter is life imprisonment. However, judges employ their discretion in determining the extent of the sentence to the accused convicted.

\***Character/Nature or record of the offender**

As a principle of law and as a rule of evidence, character evidence or evidence of character of the accused person is in question, the evidence of his character become admissible in law.

**Adeyeye V. The State Supra,** part of the reason advanced for the restatement of the heavier punishment of 18 years was that the accused person had been convicted earlier of an offence. It would appear that the court worked on the assumption that anyone with a previous conviction has lost out in times of mitigating the sentence. In **Adeleye and Ajibade,** the appellants bad character was significant in the restoration of an heavier punishment on them. In R v. State, the fact that the appellant had been previously convicted for defilement, this lead the court to increase the sentence from 18 months to 5 years imprisonment with hard labour.

In **R v. Bangaza, Adenoma C.J.N. a**s then under **Section 368(3) CPA,** it’s the age of the offender at the time of conviction that is material and it seems clear that the appellant cannot invoke the provision of the section but the responsible authorities will no doubt give such weight as he thinks.

\***Position of the offender amongst the confederates**

This is when more than one person has committed the offence

1. When an offender plays a minor role

the case of **Enaro V. The Queen,** it was held that a sentence imposed on lieutenant should never be more than that of the leader. The leader of the gang should be punished more severely than the lieutenant. This is to affirm that those who instigate should het higher punishment than those who instigated. The leader is usually the epicentre of the activity, the moving force and progenitor of the crime.

2. When an offender plays the major role

The offender who plays the major role in commission of crime is usually visited with more severe punishment than those inflicted on minor participants. This idea was given judicial recognition in **Queen V. Mohammed & others.** While the first appellant who was the leader was given a maximum sentence of 8years of imprisonment, the other party or appellant was given a maximum sentence of 5years

See also **Ihun & another V. Tiv Native Authority**

\***Rampancy of the offence**

Where an offence is rampant or prevalent court has always thought that severity of sentencing would aid in finding out a crime. In **R V. Hassan & Owolabi** the accused person was sentenced by the High Court for 5 years for forgery and another 5years for stealing. He appealed and the Supreme Court expressed his view. Thus, fraud in the customs are shockingly prevalent and forgery of commercial documents arrived at the root of all credit they are not disposed to reduce the sentence by one day. See also **State v. Ayegbeni.**

Rampancy of an offence is one of the most necessary considerations as it can be a mitigating factor or an aggravating one depending on the offence. Certain offence have been considered as serious in nature e.g. sexual offenses, especially when it involves children as victims in **State v. Adegboye.**

The gravity of an offence can also be likened to the rampancy of an offence considered rampant and grievous, the court would most likely impose a heavier punishment in the view to stamp out these type of crime in the society.

\***Starutory limitations**

In court the criminal statute of limitation is a law that forbids the prosecutor from charging someone with a crime that was committed more than some number of years ago. The general purpose of statute of limitations is to make sure that conviction occur only upon evidence that was with time. After that period of the statute has run, the criminal is essentially free. Also where the state itself has stipulated terms of imprisonment the court shall not exceed statutory limit.

However not all crimes are governed by statutory limitation, Murder for example, in some states sexual offenses with minors, crimes of violence, kidnapping, arson, forgery have no statutory limitations.

In Nigeria there are two types of statutory limitations

. Statutory maximum

. Magisterial jurisdiction limitation

 In essence whenever a statute itself has stipulated a time of imprisonment, no court should exceed the statutory limits in **Queen v. Eyo & others,** the case of unlawful assembly, the High Court sentenced them to 5 years imprisonment on Appeal to the Supreme Court, the Supreme Court decreased the imprisonment to 3 years because that was the maximum sentence stipulated by law.

\***Concurrent and consecutive sentences**

There are laws governing concurrent and consecutive sentences when a person is charged and found guilty of more than two(2) offenses in Nigeria, the general tile is that whenever a court finds an accused person guilty of more than one offence, the sentences should run concurrently. The Supreme Court held this position by saying “whenever the offences are similar or have similar disposition, they should run concurrently. In **Nwafor v. State**, where the accused person was found guilty of store breaking and possession of breaking equipment’s. The Supreme Court held that the sentence should run concurrently because they emanate from the same transaction.

 In conclusion Mr Evans having been found guilty of these offences will be sentenced after all these guidelines listed and discussed above will be viewed and his sentencing will be at my own discretion. The punishment will vary from imprisonment , caning , payment of fine, lethal injection, community service , probation, death. All these punishments are found under **Section** **17 of the criminal code.** But as we can see the nature of this offence is very sever and would call for sever punishment(s).