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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 attempting to cross the border to Benin Republic. Investigation into his activities was concluded by the police and he was brought against him include 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?***

INTRODUCTON

In all criminal trials, where a conviction is secured, the next logical step would be sentencing. Sentencing is a very broad field accommodating different approaches and ideas. Hence, the power presents sentencers with a very wide playing field and accommodates individual inclination and problem approaches or solutions to the same problem.

The criminal justice system in Nigeria starts to run with the commission of a crime and continues with subsequent interventions by the law enforcement agencies. A criminal trial involves two processes both of which are important to the society and the offender. Firstly, there is the process of determining whether the defendant/accused did the act or made the omission alleged against him; if he did, then the second leg is that of sentencing him for him wrong doing.

Anyone can look at the evidence of a case and draw their own conclusions – that is the basis of our jury system. But, a judge’s role is to use their specialist knowledge and experience of the law to ensure cases and verdicts are carried out within the limits of the law, and then to hand down judgment or sentence that take all these into consideration.

In some legislation, the words sentence and judgment are used as if they were synonymous. However, in actual fact, the use of the word judgment is of a wider scope than the word sentence. In simple legal parlance therefore, the word sentence “is an order which id definite in its nature, type and quantum, whether is it made by the court or tribunal at the discretion (made at the conclusion of a criminal trial consequent upon finding of guilt.

The term sentence may denote the action of the 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. 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 established, thus a sentence is at the post-conviction stage when the defendant is brought before the Court for the imposition of a penalty.

Section 248 of the Criminal Procedure Act provides that if the court finds the accused person guilty, the court shall pass sentence on the accused person or make an order to reserve judgment and adjourn the case to some further date.

In effect, a sentence can only be imposed in the manner prescribed by the law after the establishment of proof of committing an offence beyond reasonable doubt. A judge must not exceed the term prescribed in the stature creating an offence nor must he exceed the quantum prescribed in punishing the offender. In passing a sentence, a judge should be dispassionate in his decision and in the exercise of his judicial discretion. The ultimate goal of criminal administration is to accomplish fairness in the effective and expeditious determination of guilt or innocence. Thus, the Supreme Court has laid down Six (6) basic principles or guidelines to aid court in reaching a reasonable, just and fair sentence. They include:

1. The nature of the offence
2. The characters to the nature of the offence
3. The position of the offender among his confederates
4. The rampancy of the offence
5. Statutory limitation
6. Concurrency of the sentence

They shall be considered in details

1. **NATURE OF THE OFFENSE**

As a principle of law and practice, the nature if 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 offense which as at the time being committed does not constitute a crime in any written law and its punishment clearly stated.

As stated in Adeyeye and others v The State, the case of robbery by violence tried by the High Court of Western State, the Court imposed a sentence of 18 years imprisonment on the accused person. On appeal, the Western State Appeal Court reduced the sentence to 10 years. The accused person unsatisfied with the decision of the appeal court yet appealed to the Supreme Court. The Supreme Court reinstated the 18 years with three strokes of cane. The Supreme Court stated that the sentence of the Appeal Court was too lenient because of the seriousness of the offence.

Also, in Adesanya v The Queen (1964), the case of forgery and the principle was established that only in exceptional cases can the fine be sufficient or appropriate punishment for forgery or court processes. The seriousness of the offence, its nature, the gravity, makes forgery of the offenses more grievous.

In that case, the accused person, having committed the offence of forgery was sentenced to pay fine. On appeal on the instance of the accused person, the court held that the payment of fine was too small a punishment for the grievous offence of forgery, hence imprisonment.

In the 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/punishment as opposed to provocation murder.

In Idoye v the State, the accused person drove his car at night without headlamps in a hilltop area. In the process, he killed a pedestrian. He was sentenced to 5 years imprisonment by the High Court in addition to 10 years suspension from driving. The Supreme Court reduced the sentence to two and a half years from driving and 5 years disqualification from driving.

Similarly in Mohammed v COP, the accused person who had never driven in his life jumped into a car and killed some pedestrians. He was sentenced to three years imprisonment and 10 years disqualification from driving. The Supreme Court reduced the sentence to 18 months imprisonment and 5 years disqualification from driving.

In contrast, in provocation manslaughter, there is a tendency to impose an average time of 10 years. In Adekanmi v the State, the accused person killed his wife in a sudden overflow of emotions when she told him that their children belonged to her lover and that he is impotent. The Supreme Court upheld the defense of provocation and imposed the time of 15 years imprisonment.

In Chukwuobaji v the State, sentence of 15 years was also imposed for provocation. Perhaps the disparity between auto crash cases and manslaughter can be traced to class differentiation in that auto crash cases are more likely to occur among members of the upper/ middle class, while those in manslaughter provocation are more likely to be of lower class.

Provocation is a statutory recognized criminal defense which serves as a litigating factor and reduces 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 conviction.

1. **CHARACTER/ NATURE OF THE OFFENDER**

As principle of law, there is a rule of evidence, character evidence or evidence of character is admissible in law. However when the character of the accused person is in question, the evidence of his character becomes admissible in evidence/ law.

In Adeyeye v the State (supra) part of the reasons advanced from the statement of the18 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 terms of mitigating his sentence.

In Adeleye v Ajibade, the appellant’s bad character was significant in the restoration of an earlier punishment on them.

In R v the State, the fact that the appellant had been previously convicted for defilement led the Court to increase his sentence from 18 months to 5 years imprisonment with hard labour.

1. **POSITION OF THE OFFENDER AMONG HIS CONFEDERATES**

When the Offender Plays a Minor Role

In the case of Enahoro v the Queen, a case of treasonable felony, Enahoro was sentenced to 15 years imprisonment by the High Court. The Supreme Court reduced the sentence to 5 years and said “the sentence imposed on a lieutenant can never be more than the leader”. The leader of the gang should be punished more severely than the lieutenant. This is to affirm that those who instigate should get a higher punishment that those who are instigated. In that case, late Awolowo, the leader got 10 years sentence so the lieutenant should not get a sentence more than ten years. The leader is usually the epicenter of activities, the moving force and the progenitor of the crime.

Playing the Major Role

The offender who has played a major role in the commission of a crime is usually visited with a more severe punishment than those inflicted on the minor participant. The above idea was given judicial recognition in The Queen v Mohammed and others. While the first appellant, the leader, who was given a maximum sentence of 8 years of imprisonment, the other parties were given a maximum sentence of 5 years.

The State v Kerenku, although the appellant was found not to be the leader, the Court was however of the view that she played a leading part in the incident and most take that into consideration.

Also in Ihum and another v Tiv Native Authority where the appellant were all involved in a riot in which many animals were destroyed they all got sentences totally 6 years imprisonment except the sixth appellant who got 8 years imprisonment for being the moving force of the riot.

1. **THE RAMPANCY OF THE OFFENCE**

Where an offence is rampant or prevalent, Courts have always thought that severity of sentences imposed will aid in stamping out the crime. In R v Hassan and Owolabi, the accused person was sentenced to 5 years by the High Court for forgery and another 5 years for stealing. The appealed and the Supreme expressed its view thus “Fraud on the customs are shockingly prevalent and the forgery of a commercial documents strikes at the root of all credit, we are not disposed to reduce the sentence by one day.

The State v Michael Ayegbeni, it was also because of the court view in State v Another, that robbery on roads and water in recent times had been on increase and disturbing that the two parties in the robbery were sentenced to twenty years.

In Onyinokwu v COP, the offender was initially detained for causing harm and later he unsuccessfully tried to escape and was additionally tried with unlawful custom although he was later discharged and acquitted, the Court expressed the view that the earlier imposed on this did not show adequate considerate, not only for his first offender status but also for an offence which was not prominent in the community.

Rampancy of the offence is one of the most necessary consideration as it can be a mitigating factor or an aggravating one depending on the offence.

Certain offences have been considered as serious in nature, for example, sexual offenses especially when it involves children as victims. In State v Adegboye, a 3 years prison sentence was imposed on an offender for inserting his finger into the vagina of a little girl aged 9 who was hawking groundnut.

In Iko v The State, a taxi driver was sentenced to 5 year imprisonment with hard labour for raping a passenger so vehemently.

Robbery with violence is also considered as serious in nature. In Olanipekun v The State, during a robbery, the leader ordered one of his followers to shoot the victim. He complied but the gun did not go off. Sentencing him for 5 years with hard labour, the Court said inter alia that the society demands that such a man should be kept out of circulation from time to time.

Similarly, in R v Ozuroke where the appellant met a little girl aged about 8 years on a village road, he covered her eyes with his hands and stuffed bread inside her mouth to stop her from crying out. He took her into the bush, laid her on the ground, stood on her hand and poured acid on her body and cut off her left ear. He further forced her to open her eyes and poured acid into them. He later ran away leaving the little girl unconscious. A 20 year jail sentence was considered adequate. The offence was considered as being revolting.

Thus the gravity of an offence can also likened to the rampancy of the offence if considered rampant and grievous, the court will most likely impose a higher punishment in the view to stamp out those types of crimes in the society.

1. **STATUTORY LIMITATION**

A criminal statute of limitation is a law that forbids a breach. The general purpose of stature of limitation is to make sure convictions only occur upon evidence that has not deteriorated with time. After the period of statute has worn, the criminal is essentially free. Also where the state itself has stipulated types of imprisonment that the court that the court shall not exceed statutory limit. However, not all crimes are governed by the statute of limitation. Murder, for example, in some states sexual offences with minors, kidnapping, forgery, crimes on violence, assault, have no statutory limitation.

Many states have adopted systems that classify felonies by category. They are simple offences, misdemeanors and felonies. Furthermore, in Nigeria, there are two types of statutory limit

1. Statutory maximum
2. Magisterial jurisdiction limitation

In essence, whenever a statute itself stipulates times of imprisonment, no court should exceed the statutory limit. In Queen v Eyo and another, the case of unlawful assembly, the High Court sentenced them to 5 years imprisonment. On Appeal to the Supreme Court, the sentence was reduced to three years because that was the maximum sentence created by law.

In Aremu v IGP, the Magistrate Court sentenced the accused persons to 2 years imprisonment. Dissatisfied, the state appealed to the Supreme Court. The Supreme Court stated it cannot impose punishment more than what the Magistrate Court has imposed.

Also, in Mordi v COP, the Magistrate Court sentenced the accused person to 2 years imprisonment. The High Court later increased it to 10 years. On Appeal, the Supreme Court reinstated the early position of 2 years because that was the limitation of the Magistrate Court.

1. **CONCURRENCY OF THE SENTENCE**

There are laws governing concurrent and consecutive sentences. When a person is charged and found guilty of two or more offences in Nigeria, the general rule is that whenever a Court finds guilty of two or more offences, the sentence should run concurrently. The Supreme Court held the decision saying “whenever the offence have similar nature, they should run concurrently”

In Nwafor v The State, where the accused person was found guilty of store breaking in and the possession of breaking instrument /implements, the Supreme Court held that the offence should run concurrently, because they are offences of the same transaction.

**CONCLUSION**

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

The sentencing guideline is a comprehensive template prepared by the Supreme Court that will guide the Court in arriving at the sentence to be imposed. Prior to preceding explanations, 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 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 a parameters towards assisting the judge in the imposition of sentence.

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 labour.

The sentencing guideline is a veritable tool for assisting the judge in sentencing process. This process also aids in curtailing the disparity in sentencing.