**DOSUMU OLUWATUNMISE IFEOLUWA**

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**CRIMINOLOGY II**

**LPI 304**

**SENTENCING**

The criminal justice in Nigeria commences with the commission of a crime and continues with subsequent interventions by the law enforcement agencies and the system has the rights to arraign, arrest, sentence and punish the offender accordingly. The criminal trial usually involves the state and society with the offender who is alleged to have committed the crime. The case of **ICHI V STATE 1996 NWLR** **pt. 420 ACT 89** it was held that a sentence is the judgement formally pronounced by the court or by the judge upon an accused person after his conviction in a criminal prosecution imposing punishments to be inflicted.

The purpose of sentencing is to contribute along side with the crime prevention initiatives, the respect of the law and the maintenance of just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives which are

1. To deter the offender and other persons from committing offences
2. To denounce unlawful conducts
3. To separate offenders from the society where necessary
4. To promote the sense of responsibility in offenders and acknowledgement of the harm done on the community and victims.
5. To assist in rehabilitating offenders

The supreme court in **Mohammed v Olawunmi 1993 4 WLR pt. 348 ACT 401paragraph A** held as follows once a court of competent jurisdiction makes a finding of guilt in a criminal case of quasi criminal matter the conviction has been made regardless of the inferment of sentences consequent upon it. the sentence whether of imprisonment or payment of fine emanates from the discretion of the judge after the finding of guilt and flows logically from the conviction. In Nigeria those who have been previously convicted in criminal cases usually attract partial sentences or punishments unlike first time offenders and at times vice versa. The supreme court has laid down 6 basic principles or guidelines to aid courts in reaching reasonable just and fair sentences especially in the case of Evans they are:

1. The Nature of the Offence
2. The character and nature of the offender
3. The position of the offender amongst his confederates
4. The rampancy of the offence
5. Statutory limitations
6. Concurrency of the sentence
7. **The Nature of the Offence**

As a principal of law in practice the nature of the offence committed by an accused person (the defendant or offender) of which he has been found guilty of goes a long way in dictating or determining the extent of his punishments. The law is clear that a person cannot be found guilty of an offence which as at the time it was committed it didn’t constitute to a crime in any written law and its punishments clearly stated in **Adeyeye and others v State** a case which involved robbery and violence tried by the High court of the western state . the court imposed the sentence of 18 years of 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 which then stated that the sentence given by the supreme court was too lenient because of the seriousness of the crime committed. Also, in the case of **Etim v The Queen 1964** in cases which involves manslaughter whether unintended homicide either by provocation murder or auto mobile accident, there is a tendency of the court to impose slight penalties\punishments as opposed to provocation murder. In **Idoye v State** the accused drove his car at night without head lamps in a hilltop area in the process he killed pedestrian he was sentenced to 5 years imprisonment by the High court in addition to 10years suspension the Supreme Court then reduced the sentence to 2 and half years imprisonment and 5 years disqualification which similarly happened in **Mohammed v** **COP** provocation is a statutory recognized defense or criminal defense which serves as a litigating factor and reduces cases of murder to manslaughter. The maximum sentence for manslaughter is life imprisonment. However, it is at the judge’s discretion in determining the extent of the sentence to the convicted.

1. **The Character and Nature of the Offender**

In a principle of law and rule of evidence the evidence of character is seen as very admissible in law. However, when the character of the accused person is in question the evidence of the offender’s character becomes admissible in law. In **Adeleye v Ajibade** here the appellants bad character was significant in the restoration of a heavier punishment on them. **R V State** the appellant had been previously convicted for defilement this led the court to increase the sentence from 18months to 5 years to hard labor. In the case of Evans as a notorious kingpin he demonstrated bad character because of the defaming crimes he committed like rape amongst others, it is significant that because of his notorious character he would be sentenced to a greater punishment.

1. **The Position of the Offender amongst his Confederates**

The position in question takes part in two cases which are:

1. When the offender plays the offender plays the minor role: In the case of **Enearo v The** **Queen** a case of treasonable felony Enearo was sentenced to 15years by the High court. The supreme court reduced the sentence to 5years and said “a sentence imposed on a lieutenant should never be more than the leader” the leader should be punished more severely than the lieutenant. Thus, this is to affirm that those who instigate the crime are to be given higher punishments than who didn’t. the leader is usually the epicenter and moving force and also the progenitor of the crime.
2. When the offender plays as a major role: the offender who has played the major role in the commission of a crime is usually inflicted with more severe punishments than those inflicted. The idea above was given recognition in **Queen v Mohammed and ors.** While the first appellants who as the leader was given a maximum sentence of 8 years of imprisonment and the others were given the maximum of 5 years. In **State v Kereku** although the appellant was found not to be the leader the court was however of the view that she played a leading role in the incident and must take that into consideration. A similar case is that of **Ihon and another v TIV native authority.**

The kingpin Evans would therefore be sentenced to a greater punishment to his conferdates because he seen to be the leader of the notorious group of his gang. His punishments and sentences would be higher than others because he appears in the view of the court to have instigated this crimes and offences.

1. **The Rampancy of the Offence**

where an offence is rampant the courts have always thought severity of sentences would aid in staling out the crime. In **R v Hassan and Owolabi**. The accused was sentenced to 5 years by the High court for forgery and another 5 for stealing. The appeal and the supreme court expressed its view in **State v Another** that robbery on roads and water in recent times had been on increase and disturbing that 2 parties to the robbery were sentenced to 20 years imprisonment. In Onyilokwu v C.O.P the offender was initially detained of causing harm and later he unsuccessfully tried to escape and was additionally charged with escaping from lawful custody and although he was later discharged and acquitted, the court expressed the view that 3 years imprisonment earlier imposed on him didn’t show adequate consideration not only for his first offender status but also for an offence which wasn’t prevalent in that community. The rampancy of the offence is one of the things one must consider as it can be a mitigating factor depending on the offence. Some offences are considered to be serious in nature e.g. sexual offences especially when it involves children has victims in **State v Adegboye** a 3-year prison sentence was imposed on the offender for placing his fingers in his 9-year-old victim. Another case **Olanipekun v The** **State** during a robbery, the leader ordered one of his followers to shoot a victim he complied but the gun didn’t go off he was therefore sentenced to 5 years with hard labor and then the decided in ***inter alia*** that the society demands that such a man be kept out of the society and circulation from time to time . In the case of the offender Evans he is found to have committed the grievous sexual offence of rape and defilement of young girls as seen in the case of **State v Adegboye** and also the case **Olanipekun v The State** Evans the offender should be kept from society because such a man is considered dangerous if he is let out to the society. Thus, the gravity of the sentence can also be as a result of the gravity of the offence. If considered rampant and grievous the court would most likely impose a heavier punishment in the view to stamp out this type of the crime in the society, as such the offender in this case Evans would be sentenced in a very harsh manner and his punishments seen to a heavy cause because the crimes he committed were crimes against the community and society .

1. **Statutory Limitations**

This is the law that discharges an offender of a crime that has been committed more than a specified number of years ago. the purpose of statute of limitations is to ensure that convictions occur only upon evidence that has not deteriorated with time. After that stipulated period of time the criminal is essentially. Also, where the state itself as stipulated terms of imprisonment the court shall not exceed statutory limit. However not all crimes are governed by the statute of limitation such as murder and in most states’ sexual offences, robbery, crimes of violence, arson, forgery have no statute of limitation. Furthermore, in Nigeria there are 2 types of statutory limitations which are

1. Statutory maximum
2. Magisterial jurisdiction limitation

In the essence whenever a statute stipulates a time of imprisonment no court should exceed its statutory limits. in the case of **Queen v Eyo and ors** the case of an unlawful assembly the High court sentenced them to 5 years imprisonment on appeal with the Supreme court the sentenced were then reduced to 3 years because that was the maximum sentence stipulated by law. also, in **Mordi v C.O. P** the magistrate court sentenced the accused person to 2 years and the high court later increased it to 10 years. on appeal the supreme court reinstated the earlier imposition of 2 years because that was the limitation of the magistrate court. Therefore in the case of Evans and his confederates he is still going to be sentenced for his grievous crimes because the crimes he committed are serious ones which have no statute of limitation like rape, forgery, murder and so on, because this crimes carry no statute of limitations no matter how long Evans had evaded judgement sooner or later he would still have been tried for those offences in a competent court.

1. **Concurrency of the sentence\ Concurrent and Consecutive sentences**

There are laws governing concurrent and consecutive sentences when a person is charged and found guilty of more than two offences in Nigeria, the general rule is that whenever a court finds ana 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 of similar nature or disposition they should run concurrently. In Nwankwo v The State here the accused person was found guilty and sentenced for store breaking and possession of breaking instruments of the same transactions. the supreme court held that the sentence should run concurrently because they were crimes that emanated from the same transactions. Under the offender’s case Mr. Evans, the question to be asked is if the offenders’ crimes were in the same transactions or not. The clear answer is no, Mr. Evans committed the different crimes which were not of the same course. Like rape and ritual killings or forgery. So, his sentence would not be concurrent but rather consecutively given so that he pays for all the crimes he had committed against the society.