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**Answer**

**Issue**

The legal issue borders on the guidelines to determine a reasonable, fair and just sentence appropriate for Evans.

**Rules**

A sentence can be defined as the definite order pronounced by a court of competent jurisdiction at the end of a criminal trial, after the finding of guilt against an accused person.

Sentencing is the prescription of the punishment by the court, to someone who has been convicted of a crime. Therefore, after an accused person or defendant has pleaded guilty or found guilty during the trial or prosecution process, the presiding judge would therefore enter judgment of prosecution and thereby sets a date aside for sentencing.

The Canadian Sentencing Commission in 1987 defines Sentencing as ‘the judicial determination of legal sanctions to be imposed on the person found guilty of an offence.’

The case of ***Ichi v. Stat****e* defines sentence as the judgment formally pronounced by the court or the judge, upon an accused person, after his conviction in a criminal prosecution, imposing the punishment to be mitigated. In other words, it is the judgment formally declaring to the accused person the legal consequences of the guilt which he has confessed to or which he has been convicted of.

The importance of sentencing is to contribute along with the crime prevention initiatives, the respect of the law and maintenance of a just, peaceful and safe society by imposing just sanctions to;

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

The supreme court in the case ***Mohammed v. Olawunmi***held that ‘once a court of competent jurisdiction makes a finding of guilt in a criminal cases or quasi-criminal matter, a conviction has been made, regardless of the deferment of sentence consequent upon it.

The Supreme Court has therefore laid down some basic principles or guidelines to aid court in reaching a reasonable, just and fair sentence. These guidelines are as follows;

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

The nature of the offence committed by an accused person or the defendant of which he has been found guilty of, goes a long way in 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 its punishment clearly stated.

This is supported by ***Adeye and others v. State***where the supreme court reinstated a sentence of 18 years and 3 strokes, while dismissing the imposition of 10 years by the court of appeal for a grievous offence committed.

Also, in the forgery case of ***Adesanya v. The Queen,*** the principle was established that only in exceptional cases can a fine be sufficient for appropriate punishment for forgery of court processes. The seriousness of the offence, its nature, the gravity, makes forgery of court processes grievous.

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, as opposed to provocation murder. This was indicated in ***Idoye v. State,***  where the Supreme Court reduced the sentence of 5 years imprisonment and 10 years driving suspension to 2$^{1}/\_{2}$ years imprisonment and 5 years driving suspension.

Similarly, in ***Mohammed v. C.O.P,*** the Supreme Court reduced the sentence of an accused person who committed automobile manslaughter, from 3 years imprisonment and 10 years disqualification from driving to 18 months imprisonment and 5 years disqualification from driving.

Whereas, in provocation manslaughter, there is a tendency to impose an average term of 10 years imprisonment because of the gravity of the offence. We see the case of ***Adekanmi v. State,*** where the accused person who killed his wife in a sudden flow of emotion and upheld the defense of provocation. The Supreme Court upheld the defense of provocation and imposed a term of 15 years imprisonment. Similarly, in the case of ***Chukwu Obaji v.State,*** the sentence of 15 years imprisonment was also imposed for provocation.

1. Character/Nature of the Offender

As a principle of law and a rule of evidence, character evidence is inadmissible in law. However, when the character of the accused person is in question, the evidence of his character becomes admissible in law. Just as in ***Adeleye v. Ajigbade,*** the appellant’s bad character was significant in the restoration of a heavier punishment.

It appears that the court works on an assumption that anyone with a previous conviction has lost out in terms of mitigating a sentence because in ***Adeye v. the state,*** part of the reason advanced for the reinstatement of the 18 years imprisonment was that the accused person had been convicted earlier of an offence.

Also, in ***R v.state,*** the fact that the appellant had been previously convicted for defilement led the court to increase the sentence from 18 months to 5 years imprisonment with hard labour.

1. The Position of The Offender Among His Confederates

This occurs in two instances;

1. When the offender plays a minor role.
2. When the offender plays a major role.
* When the offender is playing a minor role

In the case of ***Enahoro v The Queen***, Enahoro was sentenced to 15 years imprisonment by the high court for treasonable felony. However, because he played a minor role, his sentence was reduced to 5 years imprisonment. This is because a sentence imposed on a lieutenant should never be more than the leader. The leader, who is the progenitor and the epicenter of the activity, should be punished more severely than the Lieutenant

* When the offender is playing a 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 a minor participant. This idea was given judicial recognition in ***Queen v Muhammed and others*** where the first appellant who was the leader was given a maximum sentence of 8 years imprisonment, and the other appellant who played a minor role was given a maximum sentence of 5 years imprisonment. Similarly in ***Ihom & anor v Tiv Native Authority,*** the appellant who played a minor role was visited with a less severe punishment than the appellant who was the moving force of the riot.

In ***State v Kerenke***, 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 must take that into consideration.

1. The Rampancy of the Offence

Where an offence is rampant or prevalent, the courts have always thought that severity of sentences imposed will aid in stamping out the crime. 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. 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 for offences that were shockingly prevalent in the society. In this case the court stated that they were not disposed to reduce the sentence by a day.

So also in ***State v. Ayegbemi Michael***, it was also because the court’s view in ***State v Another*** that robbery on roads and water in recent times had been on increase and disturbing, that the two parties to the robbery were sentenced to 20 years imprisonment.

In ***Onyilokwu v. COP,*** the offender was initially detained of causing harm, and later he unsuccessfully tried to escape and was additionally charged with escaping from lawful custody, although he was later discharged and acquitted, the court expressed the view that 3 years imprisonment earlier imposed on him did not show adequate consideration not only for his first offender status.

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

Also ***Iko v state,*** a taxi driver was sentenced to 5 years imprisonment with hard labour for raping a passenger so violently.

Robbery with violence is also considered of a serious nature, as seen in ***Olanipekun v The state***, where he was severely punished for the offence of robbery.

Similarly, in ***R v Ozuloke*** an offence was considered most revolting was visited with 20 years jail sentence. The cases of ***Adeyeye v The state*** and ***R v Okeke*** also highlight this point.

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

1. Statutory Limitation

A criminal statute of limitation is a law which prohibits prosecutors from charging someone with a crime that was committed more than a specified number of years ago. The general purpose of the statute of limitation is to make sure convictions occur not only upon evidence that has not deteriorated with time. After the period of statute has run, the criminal is essentially free.

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

Many states have adopted systems that classify felonies by category; felony, misdemeanor, simple offences. In Nigeria, there are two types of statutory limitation which are:

* Statutory Maximum
* Magisterial Jurisdiction Limitation

Also, where the statute itself has stipulated terms of imprisonment, the court shall not exceed the statutory limit. This was highlighted in the case of ***Queen v. Eyo & ors,*** reduced the sentence from 5 years imprisonment to 3 years imprisonment for unlawful assembly, because it was the maximum sentence stipulated by law.

In ***Aremu v. C.O.P,*** the Supreme Court refused to impose punishment more than what the magistrate court had imposed.

Also in ***Mordi v. C.O.P***, where the magistrate court sentenced the accused to 2 years and the high court later increased it to 10 years imprisonment. The supreme court later reinstated the earlier imposition of 2 years because that was the limitation of the magistrate court.

6. Concurrent and Consecutive Sentences

When a person is charged and found guilty of more than two offences in Nigeria, the general rule is that such person’s sentences should run concurrently. The Supreme Court held this position by saying whenever the offences committed are of similar nature, the offences should run concurrently. For example, in ***Nwaifor v. State,*** the Supreme Court held that the punishment should run concurrently because the offences emanated from a similar transaction.

**Application**

In applying the above rules, having found the accused, Evans, guilty of all the charges laid against him, this writer taking the stance of a judge would apply the guidelines posited by the Supreme Court for imposing a sentence appropriate to the accused, Evans, taking into consideration that such sentence be fair, just and reasonable.

The first guideline to aid this judge reach a reasonable, just and fair sentence is the **Nature of the offence**. In this case, Evans has been found guilty of the offence of armed robbery, kidnapping, rape, defilement, ritual killing, extortion and obtaining property by false pretence. These offences are grievous offences, and it is pertinent to note that the nature of the offence committed by an accused person, goes a long way in determining the extent of his punishment.

As seen in ***Adeye and others v. State*** where the supreme court reinstated a sentence of 18 years and 3 strokes for a case of robbery because of the seriousness of the offence.

As well as the case of ***Adesanya v. the Queen*** where the court held that payment of fine for a case as grievous as forgery was too lenient, hence imprisonment was imposed.

Therefore, it goes without saying that the nature of offences in which Evans is guilty of are grievous ones and the punishment imposed on him shall be severe.

We shall go ahead to examine the **Nature/Character of the Offender** as well, in order to aid in determining a reasonable sentence for Evans. Even though as a principle of law and rule of evidence, the evidence of character is inadmissible, for a situation like that of Evans where is character is in question, evidence character will be admissible.

As regards the character or nature of the offender, it seems that the court work on the assumption that anyone with a previous conviction has lost out in terms of mitigating a sentence. Just as seen in ***Adeye and others v. State,*** where it was stated that reasons advanced for the reinstatement of the 18 years imprisonment had to do with the fact that the accused had been previously convicted.

Also, in ***Adeleye v. Ajigbade*** where the appellant’s bad character was significant in the restoration of a heavier punishment on them.

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

The following cases above have revealed that the court will determine the punishment to be prescribed based on the character of the offender and his history. If such offender has a history of being convicted for criminal activities, the court will not mitigate such offender’s sentence. In fact, the character of the offender may be a reason for the court to restore a heavier punishment on such offender, just as seen in ***Adeleye v. Ajigbade.***

Evans in this case is said to have been previously involved in series of assault, rape and defilement of young girls before he was finally apprehended by the police. For this reason, the punishment prescribed to him will be grave because as seen in his character evidence, he is not a first time offender.

The purpose of sentencing is to deter the offender and other persons from committing offences, amongst others, and for this reason, this judge will impose a heavy punishment on Evans to deter him as well as others from committing offences.

In examining the **Position of the Offender among his confederate** as a guide to determine a reasonable sentence for Evans, this judge will attempt to identify whether Evans played a **minor role** or a **major role**.

In the case of ***Enahoro v. The Queen,*** the sentence imposed to the accused was reduced because he played a minor role in the incident.

Whereas, in ***Queen v. Mohammed and others,*** the offender who played a major role in the commission of a crime was visited with a more severe punishment, than those who played a minor role. Similarly, in ***Ihom & anor v. Tiv Native Authority***, the progenitor of the crime was visited with a more severe punishment than the ones who played a minor role***.***

However, in the case of ***State v. Kerenku,*** although the appellant was found to not be the leader, the court was however of the view that she played a leading part in the incident and must take that into consideration.

The import of this is that those who instigate should get a higher punishment than those instigated. In the case of Evans, the judge is saddled with the responsibility of determining through the evidence brought before him whether Evans played a major role or a minor role. If Evans was the moving force and the epicenter of the criminal activity, a severe punishment should be imposed on him. On the other hand, if Evans played a minor role, his sentence should be less. This is to affirm that a sentence imposed on a lieutenant should never be more than that imposed on the leader.

**The Rampancy of the Offence** is another factor spelled out by the Supreme Court to aidthe court in reaching a reasonable, just and fair sentence. This factor is one of the most necessary factor, as it can be a mitigating factor or an aggravating one, depending on the offence committed.

Certain offences have been considered serious in nature. For example, sexual offences, especially when it involves children as victims. This is evident in the case of ***State v. Adegboye*** where the accused who defiled a young girl was severely punished. In the same way, a rapist in ***Iko v. State*** was sentenced to 5 years imprisonment.

In ***R v. Ozuloke,*** a 20 year jail sentence was considered adequate for an offence that was considered most revolting.

In ***State v. Ayegbemi Michael,*** it was also because of the court’s view in ***State v. another*** that the offence of robbery on roads and water had been rampant and therefore, it attracted the imposition of a severe punishment.

The courts are of the opinion that severity of sentences imposed will aid in stamping out the crime. Therefore, this judge will examine whether at the particular time Evans committed the offences of rape, armed robbery, kidnapping, defilement and extortion, these offences had been prevalent in the society. This discovery will determine how severe the punishment meted out to Evans will be, as the court is of the belief that severe sentences will be imposed where an offence is rampant, to aid in stamping out the crime. This is similar to ***R v. Hassan & Owolabi,*** where the accused person was brutally punished for committing a crime which was prevalent at that time.

**Statutory limitation** is another aspect this judge will reflect on in determining the appropriate punishment for the offender. Generally, this factor prohibits prosecutors from charging someone with a crime that was committed more than a specified number of years ago. The general purpose of this is to ensure convictions only occur only upon evidence that has not deteriorated with time.

However, an exception to this is that offences like murder, sexual offences with minors, kidnapping, forgery, arson, have no statutory limitation. Therefore, Evans who was found guilty of the offences of kidnapping, armed robbery, rape, defilement, ritual killing, extortion and obtaining property by false pretence, will still be severely punished, no matter how long ago he claims the offence was committed.

Concurrent and Consecutive sentences is the last guideline spelt out by the Supreme Court to be taken into consideration to aid in reaching a reasonable, just and fair sentence. The law holds that when a person is charged and found guilty of more than one offence, such person’s sentence should run concurrently.

In applying this to Evans’ case, this judge will identify whether all the offences are of similar nature, and if they are, the sentence would run concurrently, as seen in ***Nwaifor v. State*** where the court held that the punishment of the accused should run concurrently because the offences emanate from a similar transaction.

**Conclusion**

In conclusion, following the guidelines laid down by the Supreme Court, this judge will impose a severe punishment on Evans because the **nature of the offence committed** by Evans is a grievous one, and in trying to denounce unlawful conducts and deter offenders and others from committing such offences, such type of offence committed by Evans should not be overlooked, so long as the offence committed by Evans, is at the time being committed, constitutes a crime in any written law, and its punishment clearly stated.

This judge has also examined the **character of the offender** and is convinced that Evans should be severely punished because of his bad character, and following the facts provided, he is not a first time offender, therefore he does not deserve to be speared.

This judge will also take into consideration the **position of Evans amongst his confederates**. Whether he played a major role or minor role in the commission of the crime will serve as a factor for this judge to determine what punishment is suitable for Evans. This judge will analyze the crimes committed by Evans and consider if such crimes have been prevalent in the society. If the answer is in the affirmative, Evans will be visited with stern punishment. This is because, the judge as an agent of the law is saddled with the responsibility of carrying out actions that will enable crimes to be eliminated from the society.

The **statutory limitation** regarding the offences committed by Evans will also be examined. In this case, the crimes committed by Evans are so serious that they have no statutory limitation, which means that Evans will be severely punished, no matter how many years it takes before he is charged with the crimes.

Lastly, once this judge has decided how many years Evans will serve imprisoned, this judge will also resolve whether his sentences will run **concurrently or consecutively**.