**NAME: OLUKOYA OLUWATOMI ONYEKACHI**

**17/LAW01/228**

**CRIMINOLOGY**

**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 and attempting to cross the border to Benin Republic. Investigation into his activities was concludedby 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 the charges brought against him including kidnapping, armed robbery, rape, defilement, ritual killing extortion and obtaining property by false pretence. 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?

The criminal justice system in Nigeria starts to run with the commission of a crime and continues with subsequent interventions by agencies of the system with the arrest, arraignment, trial, sentencing and punishment of the offender. 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 his wrongdoing. In some legislation, the words sentence and judgments 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 is definite in its nature, type and quantum, whether it is made mandatory by law or it is fixed by the court or tribunal at its discretion (made at the conclusion of a criminal trial consequent upon finding of guilt).

SENTENCING as defined by The Canadian Sentencing Commission in 1987 is “the judicial determination of legal sanctions to be imposed on the person found guilty of an offence”, in the case of Ichi v. State 1996 it was held that; “a sentence is the judgement formally pronounced by the court or judge upon an accused person after his conviction in a criminal prosecution imposing the punishment to be inflicted”. In other words, it is the judgement declaring to the accused person the legal consequences of the guilt which he has confessed to or which he has been convicted of.

The Nigerian Criminal Code and the Penal Code as well as other offence-creating statutes specify the quantum of sentences, while the sentences themselves find their legitimacy in the criminal Procedure legislations applicable at the states and federal levels. The quantum or degree of sentences is specified in the offence-creating laws and this is done with or without judicial discretion. For example, certain sentences can be made mandatory by law, leaving no discretion to the courts as is the case of death penalty for all the offences for which it is stipulated as the sentence or punishable with specified single terms of imprisonment. On the other hand, certain sentences are provided with specification of a range in each instance of a minimum term and a maximum term of imprisonment, while others just specify a statutory minimum punishment or a statutory maximum punishment.

Sentencing guidelines are designed to indicate to judges the expected sanction for particular types of offences. They are intended to limit the sentencing discretion of judges and to reduce disparity among sentences given for similar offences. Although statutes provide a variety of sentencing options for particular crimes, guidelines attempt to direct the Judge to more specific actions that could be taken. The Supreme Court has laid down 6 basic guidelines to aid courts in reaching reasonable, just, fair sentences;

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

**THE NATURE OF THE OFFENCE**

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. As stated in Adeyeye & Ors v. State; a case of robbery by violence tried by the high court of western states. The court imposed a sentence of 18years imprisonment on the accused person, on appeal, the Western State Appeal Court reduced the sentence to 10 years. The accused dissatisfied with the decision took the case to the Supreme Court which reinstated the initial sentence of 18years with 3 strokes of the cane, the Supreme Court stated that the sentence of the appeal court was too lenient for the seriousness of the offence.

In cases of manslaughter i.e.; unintended homicide either by provocation murder or automobile accident; in automobile homicide there is a tendency of the court to impose slight penalties or punishments as opposed to provocation murder.

**CHARACTER/NATURE OF THE OFFENDER**

As a principle of law and a rule of evidence (or vice versa) character evidence or evidence of character is inadmissible in law. However, when the character of the accused person is in question the nature or evidence of his character becomes admissible in law. In Adeyeye v The State supra part of the reasons advanced for the reinstatement of the earlier penalty of 18 years was that the accused had been convicted earlier of an offence. It would seem that the court worked on the assumption that anyone with a previous conviction has lost out in terms of mitigating his sentence.

**POSITION OF THE OFFENDER AMONG HIS CONFEDERATES**

1. When the offender plays a minor role

In Enaoro v. The Queen; a case of treasonable felony, the accused was sentenced to 15 years imprisonment by the high court. The Supreme Court reduced the sentence to 5 years and said that the sentence imposed on the lieutenant should never be more than the leader, the leader of the gang should be punished more severely than the lieutenant.

1. When the offender plays a major role

The offender who has played a major role is usually vested with a more severe punishment than those inflicted on minor participants. This was given judicial recognition in Queen v. Muhammed & Ors; whilethe first leader who was given a maximum sentence of 8 years imprisonment, the other parties were given a maximum sentence of 5 years imprisonment.

**THE RAMPANCY OF THE OFFENCE**

Where an offence is rampant or prevalent, courts have always thought that severity of punishment imposed will aid in stamping out the crime. In R v. Hassan & Owolabi; the accused person was sentenced to 5 years by the high court for forgery and another 5 years for stealing, he appealed and the supreme court expressed its view thus; “fraud on the customs are shockingly prevalent and forgery of the commercial documents strikes at the root of it all, we are not disposed to reduce the sentence by one day”.

**STATUTORY LIMITATIONS**

In essence, whenever a statute itself stipulates a term of imprisonment no court should exceed its limits. In Queen v. Eyo & Ors; a case of unlawful assembly. The high court sentenced them to 5 years imprisonment, on appeal to the supreme courts the Supreme Court reduced the sentence to 3 years because that was the maximum sentence stipulated by law.

**CONCURRENT AND CONSECUTIVE SENTENCES**

There are laws governing concurrent and consecutive sentences in that when a person is charged and found guilty of more than 2 offences in Nigeria, the general rule is that the sentences should run concurrently. In Nwankwo v. The State; here the accused person was found guilty and sentenced for store breaking and possession, the Supreme Court held that the sentences should run concurrently because they were crimes that emanated from the same crime.

In conclusion, Evans would be given a high sentence due to the severe nature of the crimes, the fact that he was a repeat offender and the prevalent nature of the crimes in Nigeria.