**AGBOWO INNOCENT IKECHUKWU**

**17/LAW01/029**

**CRIMINOLOGY(LPI304)**

**08099538893**

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 were concluded by 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?

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. It is an exercise of a discretionary power that is little guided in a country such as Nigeria. Hence the power presents sentencers with a very wide playing field and accommodates individual inclinations and 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 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).

A sentence of the court can be defined as a definite disposition order issued by a court or other competent tribunal against a person standing trial at the conclusion of a criminal trial. This is subsequent to the finding of guilt against him and must be an order which is definite in its nature, type and quantum. 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.

Therefore, a sentence can be said to be a definite position or order pronounced by a court of competent jurisdiction at the end of a criminal trial after the finding of guilt of the accused persons. **section248 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 judgement and adjourn the case to some other date.

Most crimes are specifically highlighted in constitutions or statutes, and the provision that identifies the specific crime will also the identify the appropriate punishment. For example, a statute may read; “Violation of this statute constitutes a misdemeanour, punishable by a fine not to exceed $500 or imprisonment not to exceed 30 days or both.” Given this range of potential punishment, a judge will then consider certain aggravating or mitigating circumstances to determine where along the prescribed spectrum a particular criminal’s treatment should fall.

The court in question which is the High Court tasked with the job of imposing sentences and punishment on offenders has some laid down guidelines by the supreme court to guide or aid the courts in reaching a reasonable, just and fair sentence. The six basic guidelines are listed as follows;

* The nature of the offence
* The nature/character of the offender
* The position of the offender among his confederates
* The rampancy of the offence
* Statutory limitations
* Concurrency of the sentence.

These guidelines would be further explained in relation to the case of Evans and the way in which he should be sentenced.

THE NATURE OF THE OFFENCE
 It is a known principle in the law practice that the nature of the offence committed by an accused person (the defendant) of which he has been found guilty 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 it was committed does not constitute a crime in any written law and its punishment isn’t clearly stated either.

Cases such as **Adesanya v. The Queen** which was a case of forgery where a principle was established that only in exceptional cases can a fine be sufficient or appropriate punishment for forgery of court processes for the seriousness of the offence, the gravity and nature of the offence makes the crime of forgery a grievous one. This being the reason the accused person after having been sentenced to pay a fine, on appeal the court held that the payment of fine was too small for so grievous an offence hence they added imprisonment to the punishment given to the accused. Another case is the case of **Adeyeye &Others. V. The State**, a case of robbery by violence tried by the high court of western states where the court imposed a prison sentence of eighteen years, on appeal the Western State appeal court reduced the sentence to ten years. However, the accused was unsatisfied with the verdict and went on ahead to the supreme court which ironically reinstated the previous sentence of eighteen years’ imprisonment and in addition to it, three strokes of cane. The Supreme court stated its reason was that the sentence given to the accused was too lenient for so grievous a crime.

In relation to the sentencing of Evans, the nature of the offences which he was found guilty of are very crucial in determining the type of sentence he is likely to receive. The offences committed being;

1. KIDNAPPING: this crime is provided for in the Criminal Code Of Nigeria in **Section 364(1&2)** which states that “any person who unlawfully imprisons any person, and takes him out of Nigeria without his consent; or unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to a court for his release or from discovering to any person the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned; is guilty of a felony, and is liable to imprisonment for ten years
2. ARMED ROBBERY: The sentence for robbery is situated in **Section 402 of the Criminal Code** which is not less than twenty-one years but if the offender is armed with any offensive weapon such as a firearm or chemical material or wounds any person during or after the time of robbery would upon conviction be sentenced to death.
3. RAPE/DEFILEMENT: A grievous offence whose punishment is life imprisonment with or without caning as stated in **SEC.358(CC)**
4. RITUAL KILLING:
5. EXTORTION:
6. OBTAINING PROPERTY BY FALSE PRETENCE: Which is provided for in the Criminal Code in **Section 418 and 419 of the Criminal Code** states the sentence for an offender found guilty of the commission of such crime is three years’ imprisonment and if the property obtained is of the value of one thousand or upwards the offender is liable to seven years’ imprisonment

From the insight given into these crimes and their prison sentences. This writer, in regards to the sentencing of Evans having found him guilty of the crimes would suggest that he is sentenced to life imprisonment.

**CHARACTER OR NATURE OF THE OFFENDER**

Another guideline to sentencing laid down by the supreme court would be the character or nature of the offender. As a principle of law and rule of evidence, evidence of character is inadmissible in law. However, when the character of the offender is questionable then it is therefore admissible by law, in other words the character of the offender influences greatly the sentence which is to be given to the offender in the sense that if the character or nature of the offender is good then the possibility of him getting a lighter sentence is heightened but if the character/nature of the offender is found to be wanting then the offender is likely to get a heavier sentence.

In the case of **Adeyeye V. The State supra**. Part of the reasons given for the reinstatement of the earlier penalty of eighteen 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. Another case was the case of **Adeleye V. Ajibade** where the appellants bad character was significant in the restoration of a heavier punishment on them. **In R V. State** the fact that the appellant had been previously convicted for defilement led the court to increase the offenders sentence from eighteen months to five years.

Relating this guideline issued by the supreme court to the case of Evans. In terms of character, the offender (Evans) was before the arraignment and conviction already a known kidnap kingpin and armed robber who had previously been involved in a number of rape and defilement cases therefore making him a hardened criminal and a recurring offender which further proves the fact that a sentence of life imprisonment is to be issued with strokes of the cane if possible.

**THE POSITON OF THE OFFENDER AMONG HIS CONFEDERATES**

 This guideline to sentencing talks about the gravity of punishment given to the offenders according to the different roles they played in the commission of the crime and it is a laid down rule that the leaders punishment should always be more than the subordinates. An example is the case of **Enahoro V. The Queen** which was a case of treasonable felony, Enahoro was sentenced to fifteen years’ imprisonment but the supreme court reduced the sentence to five years with the reason of the punishment given to the lieutenant should never be more than that of the leader for the leader in question had gotten a sentence of ten years’ imprisonment. The idea of leaders getting the most punishment was first given judicial recognition in the case of **Queen V. Muhammed** and others where the first appellant who was the leader was given a maximum sentence of eight years’ imprisonment while the other parties to the crime were given a maximum sentence of five years. There are instances where the offender is not the actual leader but is seen to have played a leading role in the crime and this is taken into consideration by the court as in the case of **Kereku V. The State**.

Given that Evans was a kidnap kingpin it is clear that he was the leader in the crimes of kidnapping that occurred for a kingpin is somewhat of a leader, now it is not clear if Evans was the leader in the rest of the crimes he was found guilty of, but from this writers view he does seem to have played a leading role in the crimes and the court will take this into further consideration regarding the offenders sentencing.

**THE RAMPANCY OF THE OFFENCE**

An offence is said to be rampant or prevalent when the offence is committed a lot on a daily basis or the number of times it is committed increases daily or regularly. It can also be said to be prevalent and the courts have always thought that the severity of sentences imposed on the offenders would aid in stomping out the crime. Rampancy of the offence is one of the most necessary guidelines to sentencing as it can be a mitigating factor or an aggravating one depending on the offence that is why certain offences such as sexual offences have been considered serious in nature. In the case of R V. Hassan & Owolabi the accused person was sentenced to five years’ imprisonment by the High Court for forgery and another five years for stealing, he appealed and the court of appeal and the supreme court expressed their view thus “fraud on the customs are shockingly prevalent and forgery of the commercial documents strikes at the root of all credits, we are not disposed to reduce the sentence by one day”. So also in **The State V. Ayegbeni Michael** it was due to the courts view that robbery on road and water had been on the increase and was disturbing the community that the two parties in the robbery had been sentenced to twenty years imprisonment.
The gravity of an offence will also be likened to the rampancy of an offence therefore if an offence is considered rampant and grievous the court would most likely impose a heavier punishment with the aim of stamping out the crime in question SEE R V. OKEKE.

As a guideline to the sentencing of Evans from the insight given on rampancy of the offence and taking into consideration, the present situation in Nigeria, the offences committed by Evans are all rampant and grievous offences therefore his sentence will most likely be one imposed with the aim of warning future offenders and stamping out the crimes in the society.

**STATUTORY LIMITATIONS**

 A statute of limitation is a law that prohibits prosecutors from charging someone for a crime that was committed for more than the specified number of years required. The main purpose of statutes of limitation is to make sure the convictions only occur upon evidence that has been detiorated with time.
 The criminal is essentially free after the period given to serve by the statute of limitation, also, where the state itself has stipulated terms of imprisonment the courts shall not exceed the limit. However not all crimes are governed by the statute of limitation for example; murder and in some states certain offences such as; sexual offences with minors, crimes of violence, kidnapping, arson, forgery, etc. furthermore there are two types of statutory limitations in Nigeria and they are;
Statutory maximum and Magisterial jurisdiction invitation.
 In summary, whenever a statute itself stipulates the terms of imprisonment, no court shall exceed the statutory limit, in **Queen V. Eyo & others**, a case of unlawful assembly, the High Court sentenced them to five years imprisonment, a sentence which the supreme court had reduced to three years because that was the maximum number of years stipulated by law. Also in **Morbi V. Commissioner of police**, the magistrate court sentenced the accused person to two years, the High Court later increased the sentence to ten years and on appeal the Supreme Court had reinstated the original sentence of two years being that it was the maximum number of years the Magistrate court could give in terms of the offence.

In regards to the sentencing of Evans, although some of the crimes committed do have a specific number of years allocated such as the crime of extortion and obtaining property with false pretence, the court cannot overlook the more grievous crimes which have harsher terms such as life imprisonment and death sentences as such , the guideline of staute of limitation have no say in the sentencing of Evans

**CONCURRENCY OF THE SENTENCE**

There are laws governing concurrent and consecutive sentences in Nigeria and these laws stipulate that when a person charged, is found guilty of more than two offences the sentences for those offences would run concurrently, the Supreme Court further supported the rule by saying that wherever the offences are of similar nature or disposition , they should run concurrently meaning that the sentences would go together or at the same time. For example if an offender is convicted for two crimes and the sentence for each is five years, if the sentences are to run concurrently, the offender would serve five years instead of ten years.
in the case of **Nwankwo V. The State** the accused person was found guilty and sentenced for store breaking and breaking instruments that emanated from the same crime. The Supreme Court held that the sentence should run concurrently because they were crimes that emanated from the same transaction.

The guideline of concurrency of the sentence does not affect the sentencing of Evans for the reason that he is serving a life sentence.