NAME: INYANG VIVIAN

MATRICULATION NUMBER: 17/LAW01/150

COURSE TITLE: CRIMINOLOGY II

The legal issue surrounding the above hypothetical scenario is dependent on the rules governing sentencing. Sentencing has been defined as the prescription of punishment by a court to someone convicted of a crime. In the Nigerian criminal justice system, when once a crime is committed, subsequent intervention will follow by law enforcement agencies who are vested with the power to arrest, arraign, try, sentence and punish an offender accordingly and also in line with the provisions of the law. Sentencing was also defined in ***Ichi v State,*** as a judgement formally pronounced by the court or a judge upon an accused person after his conviction in a criminal proceedings imposing the punishment to be mitigated; or a judgement formally declaring to the accused person, the legal consequences of the guilt to which he has confessed to or so been convicted of. According to the Black’s Law Dictionary, ‘sentencing’ is the judicial determination of the penalty for a crime. The Black’s Law Dictionary also defines a sentence as the judgement that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer. A sentence is defined as a definite order pronounced by a court of competent jurisdiction at the end of a criminal trial, after finding of guilt against the accused person. In the case of **Mohammed v Olawunmi,** it was held that once a court of competent jurisdiction makes a finding of guilt in a criminal or quasi-criminal matter, a conviction has been made regardless of the deferment of sentencing or consequence upon it. It is pertinent to note that first and foremost, before a court can pronounce a judgement on a convicted person, it has to be a court of competent jurisdiction. It is provided under **section 248 CPA,** that if court finds the accused person guilty, the court shall pass sentence or make another sentence and adjourn the case to another date.

The rules however, guiding the court in sentencing as laid down by the supreme court include: the nature of the offence, the character/nature of the offender, position of the offender among his confederates, the rampancy of the offence, statutory limitation and concurrency of the sentence. The nature of the offence which has been committed is taken into cognissance before a sentence is imposed. The position of the law is that a person cannot be found guilty of an offence which at the time it is being committed does not constitute an offence. In the case of **Adeyeye and ors v State,** a case of robbery by violence which was sat upon by the High court of the Western state; the court imposed a sentence of eighteen years imprisonment. On appeal to the Western State Appeal court, the court reduced the sentenced to ten years. The accused, unsatisfied with this decision, appealed to the supreme court; the supreme court reinstated the former eighteen years with an addition of three strokes of cane; stating that the appeal court was too lenient because of the seriousness of the offence. In **Idaye v State,** the accused person drove his car at night without headlamps in a hilly area; killing a pedestrian. He was sentenced to five years imprisonment in addition to ten years suspension from driving by the High court. The Supreme court reduced its sentence to two and a half years in prison and five years disqualification from driving. Also in **Adesanya v Queen,** a case of forgery was sentenced to pay fine. The court held that the payment of fine was too small a punishment for the heinous offence of forgery; hence imprisonment. The principle was established that only in exceptional cases can a fine be an appropriate punishment for forgery of court processes. The nature or gravity of the offence is paramount in imposing a sentence and the court increases or reduces a sentence based on the nature of the offence; amongst other guidelines to be considered.

The next guideline which is considered is the character of the offender. The character of an offender plays an important role in the determination of the sentence to be meted out to such an offender. It is a principle of law and rule of evidence that character evidence is inadmissible in law. However, in instances where the character of the accused person is in question, the nature of his character becomes admissible in law. In the case of **Adeleye v Ajibade**, the appellant’s bad character contributed to the restoration of a heavier punishment on them. Also in **R v State,** the fact that the appellant had previously been convicted for defilement led the court to increase his sentence from eighteen months to five years imprisonment with hard labor. In the case of **Adeyeye and ors v State ,** part of the reasons for the reinstatement of the earlier punishment was that the accused person had previously been convicted of an offence. It may be said that the court works on the assumption that anyone who has been earlier convicted of an offence has lost out in terms of mitigating his sentence.

A third guideline is the position of the offender among his confederates. This entails the part played by the offender in the commission of such an offence for while he or she has been found guilty. This guideline is bifurcated into; when the offender plays a major role and when the offender plays a minor role. In **Enahoro v Queen**, a case which bordered on treasonable felony, Enahoro was sentenced to fifteen years imprisonment by the High court. The Supreme court reduced it to 5 years and said “a sentence imposed on a lieutenant should never be more than the leader”; the leader of a gang should be punished more severely than a lieutenant. In this case, the late Awolowo who was the leader, got ten years sentence, therefore, the lieutenant should not get a sentence higher than that of the leader, this goes forth to show that those who instigate should get a higher punishment than those instigated in order to achieve that, the role played by an offender whether minor or major should be taken into consideration before imposing a sentence. On the flipside, an offender who plays a major role in the commission of a crime usually faces a more severe punishment than that imposed on those who play minor roles in crime commission. In **Queen v Mohammed and ors**, the first appellant, who was the leader, was given eight years imprisonment while the other appellants were given a maximum sentence of five years imprisonment. In the case of **State v Kerenku**, although the appellant was found not to be the leader, the court was of the view that she played a leading part in the incident and that must be taken into consideration. The role played by an offender in the commission of a crime goes a long way in the determination of punishment to be imposed on such an offender.

Rampancy of the offence is also a major thing to be considered before imposing a sentence. Naturally, courts tend to impose heavier sentences on very rampant crimes, in a bid to prevent its recurrence such an offence; and resultantly stamp out that offence completely. In the case of **State v Michael Ayegbeni**, the court was of the view that robberies on roads and water in recent times were on the increase and as such, the two parties to the robbery were sentenced to 20 years imprisonment. In **State v Adegboye** , a three year prison sentence was imposed on an offender for inserting his finger into the vagina of a little girl of 9 years, who was hawking groundnut. Also, in **Iko v The State,** a taxi driver was sentenced to five years imprisonment with hard labour for raping a passenger so violently. Similarly, in the case of **Olanipekun v The State,** during a robbery, D, the leader, ordered one of his followers to shoot a victim. He complied but the gun did not go off. He was given five years imprisonment with hard labour, and in sentencing him, the court held that the society demands that such a man as D, be kept out of circulation from time to time. Robbery with violence is also considered very serious in nature. In essence, if a court is of the view that an offence is rampant then a heavier punishment could be imposed to prevent such from repeating itself.

Statutory limitation comes into play in the imposition of a sentence in the sense that, a criminal statute of limitation that is, a law of forbidding a prosecutor from punishing someone with a crime committed a specified number of years ago, is taken into consideration when imposing a sentence. In some states however,sexual offenceswith minors, kidnapping, arson, and many more have no statutory limitation. In the case of **Aremu v IGP**, the magistrate court sentenced the accused persons to two years imprisonment. Dissatisfied, the state appealed to the Supreme Court. The Supreme Court stated that it cannot impose punishment more than what the magistrate court has imposed.

Another guideline governing sentencing in Nigerian criminal justice system is concurrent and consecutive sentences. The laws governing this provides that where a court finds a person guilty of more than 1 offence, his sentences should run concurrently, that is, serving the sentences all together. In **Nwaifo v The State** , the accused person was found guilty and sentenced for store break in and the possession of break in implements in the same transaction. The Supreme court opined that the punishment should run concurrently because they are offences emanating from a similar transaction. The Supreme court in another case also held the position that ‘whenever the offences are of similar disposition, they should run concurrently’.

In applying the above mentioned rules to the hypothetical scenario, I will take into consideration the nature of the offences committed by Evans which range from assault to defilement and even rape of young girls which is considered a heinous and grave offence. Also, bearing in mind that he is a notorious kidnapper and armed robber, which in essence means that, he is not a first time offender, and the fact that he was about to escape, via the border and dressed as a lady; this will guide me in the determination of sentencing. I will also consider Evans’ position amongst other offenders, that is, if he is working alone and the role he plays. The rampancy of the offences which he has been found guilty of will be taken into cognizance and likewise, the statutory limitations of the offences (if any), whether in form of statutory maximum or magisterial judicial limitation will be considered as well. The last guideline that will aid my imposition of sentencing on Evans will be the rule governing concurrent and consecutive sentencing; that is whether he should serve the sentences together or one after the other.

I conclude that in the sentence which will be imposed on Evans who has been found guilty of such grievous offences, as a presiding judge, I will be guided by the guidelines governing sentencing in the Nigerian criminal justice system. I will bring to bear the nature of Evans’ criminal escapades, his character, position among other offenders (if there are any), rampancy, statutory limitations (if any), and concurrent and consecutive sentences. These guidelines will work hand in hand to assist in the determination and imposition of a sentence on an offender and it is possible for two or more of these guidelines to be considered at the same time.