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Answer

Firstly, a sentence is the pronouncement by the court upon the accused person after his conviction in criminal prosecution, imposing the punishment to be inflicted. ***According to the Black’s Law Dictionary,*** it s regarded as the judgement that a court finally pronounces after finding the defendant guilty or the punishment imposed on criminal wrongdoer. The sentencing guideline is a comprehensive template that will guide the court in arriving at the sentence to be imposed. They are designed to indicate to judges the expected sanction for particular types of offences. The Supreme Court in ***Mohammed v Olawunmi*** 1993 4WLR held as follows: “Once a court of competent jurisdiction makes a finding of guilt in a criminal case or quasi-criminal mater, a conviction has been made regardless of the deferment of the sentence 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 flow logically from the conviction.”

However, the things that will guide me as a Presiding Judge in sentencing Evans are the 6(six) basic guidelines laid down by the Supreme Court to aid courts in reaching a reasonable, just and fair sentence and they include:

1. The nature of the offence
2. The character/ nature of the offender
3. Position of the offender amongst confederates
4. The rampancy of the offence
5. Statutory limitation
6. Concurrency of the offence
7. THE NATURE OF THE OFFENCE

As a principle of law and practice, the nature of the offence committed by an accused person (defendant) of which he has been found guilty goes a long way in determining or dictating the extent of his punishment. The judge will look at what kind of crime has been committed and how serious it is. Certain offences have been considered as serious in nature, for instance, offences such as armed robbery, arson, murder, kidnapping or sexual offences especially when they involve children as victims. 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. In ***Adeyeye & Ors v State***, a case of robbery by violence tried by the High Court of the Western State, the court imposed the sentence of 18years imprisonment on the accused person. On appeal, the Western State appeal court reduced the sentence to 10years. The accused person unsatisfied with the decision of the appeal court yet appealed to the Supreme Court. The Supreme Court reinstated the 18years imprisonment with 3 strokes of cane. The S.C stated that the sentence of the Court of Appeal was too lenient because of the seriousness of the offence. Also, in ***Adesanya v The Queen***, the case of forgery and the principle was established that only in exceptional cases can a fine be sufficient or appropriate punishment for forgery. In this case, the accused having committed the offence of forgery was sentenced to pay a fine. On appeal, the court held that payment of fine was too small a punishment for the grevious offence of forgery, hence imprisonment. In ***R v Ozuloke***, the appellant met a little girl aged about 8years who was related to him on a village road, he covered her eyes with his hand and stuffed bread into her mouth to stop her crying out and took her into a bush, he laid her out on the ground, stood on her hand, poured acid over her body and cut off her left ear, he forced her eyes open and poured acid into them. He later ran away leaving the little girl unconscious. A twenty year jail sentence was considered adequate as the offence was regarded as being revolting.

In cases of automobile homicide, there is a tendency of the court to impose slight penalties/punishment as opposed to provocation murder. In ***Idoye v The State***, the accused person drove his car at night without head lamps in a hill top area. In the process, he killed the pedestrian. He was sentence to 5years imprisonment by the High Court in addition to 10years suspension from driving. The Supreme Court reduced the sentence to two and half years imprisonment and 5years disqualification from driving. In contrast, in provocation manslaughter, there is a tendency to impose an average term of 10years. In ***Adekanmi v The State***, the accused person killed his wife in a sudden overflow of emotions when she told him that their children belonged to her love and that he is impotent and cannot do. The S.C upheld the defence of provocation and imposed a term of 15years imprisonment. In ***Chukwu Obaji v The State***, a sentence of 15years was also imposed for provocation. Perhaps the disparity between autocrash cases and manslaughter provocation cases can be traced to class differentiation. Provocation is a statutory recognized defence or criminal defence which serves as a mitigating factor and reduces cases of murder to manslaughter. The maximum sentence for manslaughter is life imprisonment. However, judges employ their discretions in determining the extent of sentence to the accused convicted.

1. CHARACTER/NATURE OF THE OFFENDER

The previous record of the accused is very important. Thus, a hardened criminal who has previously been convicted for the same kind of offence would attract a higher punishment than a mere first offender. The above proposition perhaps influence the West African Court of Appeal in the often quoted case of ***R v Adegbesin***. In this case, the court reviewed the previous record of the convict who had been involved in various crimes of the same kind and resemblance at different times and had been to prison severally. Consequently, his jail term of 3years was reviewed to 6years on appeal. As a rule of law and principle of evidence, character evidence is inadmissible in law. When the character of the accused person is in question, the evidence of his character becomes admissible in law. It will appear that our courts work on the assumption that anyone with a previous conviction has lost out in terms of mitigating his sentence. Little regard seems to be paid on the nature of the previous conviction. In ***Adeleye v Ajibade***, the appellant’s bad character here which was signified in the court’s view by their previous conviction led the court to restore their original heavier sentence. Similarly, in ***Maizako’s case***, while the sentence of the ex-convict was upheld that of the first offender was reduced. In R V State, the fact that the appellant had been previously convicted for defilement led the court to increase his sentence from 18years imprisonment to 5years imprisonment with hard labour.

Age, therefore is a very serious factor in sentencing and could influence the mind of the sentencing Judge in various ways. In ***State v Obagha***, the defendant aged 70yearswas convicted of manslaughter due to provocation; the court greatly considered his age and sentenced him to 3years imprisonment without hard labour. In ***R v Bangaza***, Adenoma CJN said “under ***S.368(8) CPA***, it is the age of the offender at the time of his conviction that is material”. So, the appellants could not invoke the provision of the section.

1. POSITION OF THE OFFENDER AMONGST THE CONFEDERATES

Playing a minor role: In ***Enahoro (1978) NMLR, 265*** a treasonable felony case involving late Chief Obafemi Awolowo , the Supreme court was quick to point out that it could not imagine a situation where a mere “lieutenant” could receive a sentence of imprisonment far in excess of that received by the leader. It therefore reduced the sentenced passed on Enahoro from 15years to 5years imprisonment.

Playing of major roles: The offender who has played a major role in the commission of crime is usually visited with more severe punishments than those inflicted on minor participants. The above idea was given judicial recognition by our courts. In ***Queen and Ors,*** while the first appellant who was the leader was given a maximum sentence of 8years imprisonment, the other person or parties to the offence were given a maximum of 5years imprisonment. In State v Kerenku (1965) although the appellant was found not to be the leader, the court was however of the view that: “she played a leading part in this particular incident and we must take that into consideration. Also, in ***Ihom Annor & Ors. V Tiv Native Authority, (IGP v Oguntade and Anor 1971*** where the appellants were all involved in riot in which many animals were either maimed or destroyed, they all got sentences totaling 6years imprisonment except the sixth appellant who got 8years imprisonment simply because unlike the others in the group he was carrying a knife which was regarded as a deadly weapon.

1. RAMPANCY OF THE OFFENCE

Courts usually takes into account the fact the particular offence is prevalent in the community. While lack of prevalence of offence is a mitigating factor, the prevalence of it aggravates the punishment. When an offence is prevalent, courts have always thought that severity of sentences imposed will act as a deterrent and discourage others not to commit similar offence. The case which clearly underscored this principle of the law is that of ***State v Nwosu***. In this case, husband and wife were sentenced to 7years imprisonment each at Ado Ekiti State High Court for stealing a 7month old child because stealing of children was prevalent in that community at the material time. In another case, ***R v Hassan and Owolabi, (1971)*** the Supreme Court of Nigeria expressed its view thus: “Frauds on the customs are shockingly prevalent and the forgery of commercial documents strikes at the root of all credit. We are not disposed to reduce the sentence by one day” as in ***State v Michael Ayegbeni***. It was also because in the court’s view in ***State and 2 Ors*** that robbery on the roads and water in recent times had been on the increase and also disturbing that two of the parties to the robbery were sentenced to 20years imprisonment. In ***Kuge 1978***, although the eleven count charge of fraudulent accounting in the Native Administration was a serious offence, the West African Court f Appeal was inclined to consider non-prevalence of the offence as a factor leading to the reduction of the sentence of 7years to 4years imprisonment . Also, in ***Onyilokwu v COP 1981 2NCR 49*** the court expressed the view that 3years imprisonment earlier imposed on him did not show adequate consideration not only for his first offender status, but also for an offence which was not prevalent in the community.

1. STATUTORY LIMITATION

A statute of limitation is a law passed by a legislative body to set the maximum time after an event within which legal proceedings may be initiated. The general purpose of statutory limitation is to make sure conviction occur only upon evidence that has not deteriorated with time. After the period of statute has run, the criminal is essentially free. However, in Nigeria there are two types of statutory limitation, we have: statutory maximum and magisterial jurisdiction limitation. In essence, whenever a statute itself has stipulated a time of imprisonment, no court should exceed statutory limit. In ***Queen v Eyo and Others,*** the case of unlawful assembly the High court sentenced them to 5years imprisonment. On appeal to the Supreme Court, it decreased the imprisonment to 3years because that was a maximum sentence stipulated by law. Also, in ***Mordi v COP*** the Supreme court reinstated the earlier imposition to 2years because that was the limitation of the magistrate court.

1. CONCURRENCY OF THE SENTENCE

There are laws governing concurrent and consecutive sentences. When a person is charged or found guilty of more than 2 offences in Nigeria, the general rule is that whenever a court finds the accused 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 have similar disposition they should run concurrently. In ***Nwafor v State,*** the accused person was found guilty and sentenced for store breaking and possession of breaking equipments. The S.C held that the sentence should run concurrently because they emanate from the same transaction.

CONCLUSION

This talks about the use of the use of the guidelines as it applies to sentencing in Nigeria. It also displays the mitigating and aggravating factors highlighted by the courts in the course of imposing sentences. It shows the factors that the court would consider like for first offenders as it mitigates the punishment given to them. The guidelines are however intended to limit the sentencing discretion of judges and to reduce disparity among sentences given for similar offences. Considerations such as the aggravating factors which ought to be considered in sentencing, previous conviction, multiplicity of offences committed, steps taken to prevent victims or witnesses from supporting the investigation or testifying, while mitigating factors such as absence of previous conviction, remorse of the offender, evidence of good character are all factored as parameters towards assisting the judge in the imposition of sentence. However, there is a role of Allocutus in sentencing. Allocutus is also known as plea of mercy. It is usually a plea for mitigation of sentence upon the convicted person. A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

REFERENCES

<https://donnihjournals.org>

<https://www.ussc.gov>

<https://aessweb.com>