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INTRODUCTION

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 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 solution 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 judgement are synonymous.

However in actual fact, the use of the word judgement 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)

The meaning of sentencing can be defined as “the judicial determination of a legal sanction to be imposed on a person found guilty of an offence”,[[1]](#footnote-0). Sentencing is also the pronouncement by the court or judge upon the defendant after his conviction in criminal prosecution, imposing the punishment to be inflicted, usually in the form of a fine, incarceration or probation.

Sentencing means the prescription of a particular punishment by a court to someone convicted of a crime. Thus, after an accused person or defendant has pleaded guilty or has been found guilty during the trial or prosecution process, the presiding judge or magistrate then enters judgement of conviction and thereby sets a date aside for sentencing.

In Nigeria, those who have been previously convicted in criminal cases usually attract harsher sentences or punishment than the first offenders. It is however sad to observe that the high level of corruption in the criminal justice system in Nigeria has led to summary miscarriages of criminal justice which In turn have brought about the presence of “innocent criminals” in our prison[[2]](#footnote-1).

Sentencing generally aims at the protection of the society through prevention of crime or reform of the offender which may be achieved by the means of deterrence, elimination or reformation/rehabilitation of the offender, the justification is that imposing the penalty will reduce the future incidence of such offenses by preventing the offender so that the criminal motivation or inclination is removed or by the discouraging or educating other potential offenders. These are known as reductive justification[[3]](#footnote-2).

**IMPORTANCE OF SENTENCING**

1. To denounce unlawful conduct
2. To assist in rehabilitation of offenders
3. To deter the offender and the other person from committing offenses
4. To promote the sense of responsibility with the offenders
5. To acknowledge the harm that has been done
6. To serve as a retribution

In Nigeria the Supreme Court has laid down some guidelines to help in the sentencing of an accused person. Some of these guidelines are as follow;

* The nature of the offense
* Character or the nature of the offender
* The position of the offender among his confederates
* The rampancy of the offense
* Statutory limitation
* Concurrency of the sentence

**THE NATURE OF THE OFFENSE**

As a principle of law and practice, the nature of the offense committed by an accused person(the defendant) of which has been found guilty goes along way in dictating or determining the extent of his punishment. The law is clear that a person cannot be found guilty of an offense 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[[4]](#footnote-3),*** a case of robbery by violence tried by the High Court of Western States. The Court imposed a sentence of 18 years imprisonment on the accused person. On appeal, the Western State Appeal Court reduced the sentence to 10 years. The accused person unsatisfied with the decision of the appeal court yet appealed to the Supreme court. The Supreme court rein stated the

18 years with 3 strokes of cane. The Supreme Court stated that the sentence of the Appeal court was too lenient because of the seriousness of the offense. Also in ***Adesanya v. The Queen[[5]](#footnote-4),*** the case of forgery and the principle was established that only in exceptional cases can a fine be sufficient appropriate punishment for forgery for Court processes. The seriousness of the offence, its nature, the gravity, makes forgery of Court processes grievous.

**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 rein statement of the earlier penalty(18 years), was that the accused person has 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. In ***Adeleye & Ajibade,*** the appellant bad character was significant in the restoration of an heavier punishment on them. In ***R v State,*** the fact that the appellant had been previously convicted for the defilement. This led the Court, to increase the sentence from 18 months to 5 years imprisonment with hard labor.

**POSITION OF THE OFFENDER AMONG HIS CONFEDERATES**

In ***Enahoro v The Queen[[6]](#footnote-5),*** a case of treasonable felony Enaoro was sentence to 15 years imprisonment by the High Court. The Supreme Court reduced the sentence to 5 years and said 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. This is to affirm that those who instigate should get a higher punishment than those instigated. In that case the Late Awolowo the leader, got 10 years sentence so the lieutenant should not get a sentence higher than 10 years.The leader is usually the epicenter of activities. The moving force and the progenitor of the crime.

The offender who has played a major role in commission of a crime is usually visited with more severe punishment than those inflicted on minor participants. The above idea was given judicial recognition in ***Queen v. Mohammed & ors[[7]](#footnote-6)*.** While the first appellant who was the leader 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, Court have always taught that severity of punishment imposed will aid in stamping out the crime. In ***R v. Hassan & Onolabi,*** the accused person was sentenced to 5 years by the High Court for forgery and another 5 hears for stealing. He appealed and the Supreme Court expressed his view thus “fraud on the customs and shockingly prevalent and forgery of the commercial document strides at the root of all credit, were not disposed to reduced the sentence by one day”. So also, in ***State v. Micheal Ayegbemi,*** it was also because of the court view in another case was 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. C.O.P[[8]](#footnote-7),*** 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 in imprisonment did not show adequate

consideration not only for his first offender status but also for an offence which wasn’t prevalent in that community.

**CONCURRENT AND CONSECUTIVE SENTENCES**

There are laws governing concurrent and consecutive sentences. When a person is charged and found guilty of more than two offenses in Nigeria. The general rule is that whenever a Court finds an accused person guilty of more than one offence, the sentence should run concurrently. The Supreme Court held this position by saying whenever the offenses are similar or of similar nature or disposition, they should run concurrently.

In ***Nwankwo v. The State,*** here the accused person was found guilty and sentenced for store breaking and possession of breaking of the same transaction instruments. The Supreme Court held that the sentence should run concurrently because they were crimes that emanated from the same.

I, the writer( the Judge) in this given context or case when giving my judgement will adhere to the various rules in sentencing. When a person is convicted on multiple charges with different degrees of punishment (IE different years of punishment), the convict serves the term concurrently. Eg, if count 1 is 6 years, count 2&3 are 6 and 8 years respectively, ordinarily the convict is supposed to spend 20 years in prison. But it is not so, I,the Judge in this context will pronounce that he will only spend 8 years in prison instead of 20years.

NB that the 8 years is the highest no of years in each count. Based on the charges brought up against Mr Evans the highest punishment based on each counts is the death penalty( Section402 of the Criminal Code) for Armed robbery and also Murder Section 316 and 319 of the Criminal Code

1. Landdian Sentencing Commission 1987 [↑](#footnote-ref-0)
2. Ugwuoke, 1994 [↑](#footnote-ref-1)
3. The Lawyers Chronicle [↑](#footnote-ref-2)
4. [2013] JELR 54980 [↑](#footnote-ref-3)
5. [1964] 1 ALL NLR 58 [↑](#footnote-ref-4)
6. [1985] 3 NWLR Pt. 12, 236 [↑](#footnote-ref-5)
7. [2014] [↑](#footnote-ref-6)
8. [1981] 2 NCR 49 [↑](#footnote-ref-7)