**NAME: AJANI TAIWO PAMELA.**

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**COURSE TITLE: CRIMINLOGY II.**

**COURSE CODE: LPI 304.**

**DEADLINE: 15 APRIL, 2004.**

**ASSIGNMENT.**

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 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 pretense. 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?

**ANSWER**

What does the term sentencing? It can be defined as the prescription of punishment by the court to someone convicted of a crime. In the case of Ichi v State 1996 9 NWLR pt. 470 83 Act 89, it was held that a sentence is judgment formally pronounced by the court or a judge upon an accused after his conviction in a criminal prosecution imposing a punishment to be inflicted. In other words, it is the judgement formally ordering to the accused person legal consequences of the guilt which he has confessed to or which he has been convicted of doing.

S248 of the Criminal procedure Act provides that if the court finds the accused guilty, the court shall pass sentence on the accused person or male on order to reserve judgment and adjourn the case to some other date.

In sentencing Evans, one will follow the guidelines set by the Supreme Court. The Supreme Court has placed these six basic guidelines to aid the court in reaching a reasonable just and fair sentence. These guidelines include:

1. The nature of the offence.
2. Character/ nature of the offender.
3. 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.**

In sentencing Evans, the nature of the offence of the offence has to be looked at. As a principle of law and practice the mature of the offence committed by the accused goes a long way in determining the extent of his punishment. It is important to note that one cannot be sentenced for that which wasn’t a crime when committed and since all done by Evans is presently criminal he can be sentenced for them.

The court would be lenient where the crime is a serious offence. In the case of Adeyeye and Others v The State, a case of robbery and violence tried by the High Court of Western State, the court imposed a sentence of 18yrs imprisonment on the accused person. On appeal, the Western State Court of Appeal reduced the sentence to ten years. The accused person unsatisfied with the decisions of the appeal court appealed to the Supreme Court. The Supreme Court reinstated the 18 years with three strokes of cane. The Supreme Court stated that the sentence of the Appeal Court was too lenient because of the seriousness of the offence.

Also, in the case of Adesanya v The Queen, a case of forgery, it was established that only in exceptional cases would payment of fine be appropriate punishment for forgery. In this case the accused person having committed the offence of forgery was sentenced to pay a fine. On appeal at the instance of the accused person, the court held that the payment of a fine was too small for the grievous offence of forgery and hence imprisonment.

 **CHARACTER/NATURE OF THE OFFENDER.**

 As a rule, or principle of law the character of evidence or evidence of character is inadmissible in law. However, when the accused is of a question, evidence of his/her character is admissible in law. In the earlier stated case of Adeyeye and Others v The State, one of the reasons the 18 years imprisonment sentence was reinstated was due to the fact that the accused had been convicted of an earlier offence. It would that the curt works on the assumption that anyone who has been previously convicted has lost the chance to mitigate sentence. In Adeleye v Ajibade, the appellants bad character was significant in the restoration of a heavier punishment. The fact that the appellant had been previously convicted for defilement led the court to increase the sentence of 18 months to 5 years imprisonment with hard labour in R v State.

 **POSITION OF THE OFFENDER AMONG HIS CONFEDERATES.**

The offender can be either be as playing a major role or a minor role among his confederates or in the crime.

1. Playing a minor in the crime.

In Enaro v The Queen, a case of treasonable felony, Enaro was sentenced to 15 years imprisonment by the High Court. The Supreme Court reduced the sentenced to 5 years and said “a sentence imposed on a lieutenant should never be more than a leader” the leader of a gang should be punished more severely then the lieutenant. This is to affirm that those who instigate should get a higher punishment than those instigated. In the case, the late Awolowo, the leader got a ten years sentence, so the lieutenant should not get a sentence higher than ten years. The leader is usually the epicenter of the activity, the moving force and the progenitor of the crime.

1. Playing a major role.

the offender who plays a major role in the 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 and Others. While the first appellant who was the leader was given maximum sentence of 8 years imprisonment, the other parties were given a maximum sentence of 5 years. In State v Kerenkwo, although the appellant was fund not to be the leader, the court was of the opinion that she was playing a leading part in the incident and took the into consideration. Also, in Ihom and Another v Tiv Native Authority, where the appellants were involved in a riot in which many animals were maned destroyed. They all got sentencing totaling six years imprisonment except the sixth appellant who got eight years imprisonment for being the moving force of the riot.

**RAMPANCY OF THE OFFENCE.**

 Courts usually impose a heavier punishment on those who commit rampant or prevalent crimes in order to stamp it out. In R v Hassa & Owolabi, the accused person was sentenced to 5years imprisonment by the High Court for forgery and 5 years for stealing. He appealed and the Supreme Court expressed its view “Thus, fraud on the customs are shockingly prevalent and forgery of commercial documents strikes at the root of all credits. We are disposed to reduce the sentence by one day.” In Onyilokwu v C.O.P, the offender was initially detained for causing harm and later unsuccessfully tried to escape and was additionally charged with escaping from custody although he was discharged with escaping from custody although he was discharged and acquitted, the lawful court expressed that 3 years imprisonment earlier imposed on him did not show adequate consideration not only for his first offender status but also for an offence that was not prevalent in the community.

 Rampancy of the offence is one of the most necessary consideration as it can be a mitigating factor in consideration the seriousness of an offence. In State v Adegboye, a 3-year prison sentence was imposed on am offender for inserting his finger into the vagina of a little girl, aged nine who was hawking groundnut. Also, in Iko v The State, the taxi driver was sentenced to five ears imprisonment with hard labour for raping a passenger violently.

 **STATUTORY LIMITATION.**

 In criminal law, statute of limitation is a law that forbids prosecutors from charging someone with a crime which has passed the time stipulation. The general purpose of statutory limitation is to make sure that convictions occur only on evidence that has not deteriorated with time. Where the time has passed the criminal is free and the court shall not exceed the statutory limit once the terms of imprisonment have been stipulated. It is very important to note that not all crimes have statutory limitation such as murder, kidnapping, assault, forgery etc.

 There are two types of statutory limitation; statutory maximum and magisterial jurisdiction. In essence wherever a statute itself has stipulated a time of imprisonment, no court should exceed its statutory limits. In Queen v Eyo and Ors, the case of unlawful assembly, the High Court sentenced them to 5 years imprisonment. On appeal to the Supreme Court, they decreased it to 3 years because that was the maximum sentence stipulated by the law. Mordi v C.O.P, the magistrate court sentenced the accused person to three years and the High Court later increased it to 10 years. On appeal, the Supreme Court reinstated the earlier imposition of 2 years because that was the limitation of the magistrate court.

 **CONCURRENT AND CONSECUTIVE SENTENCES.**

 There are laws that governing concurrent and consecutive sentences. When a person is charged and found guilty of more than two offences in Nigeria, the general is that whenever a court finds an accused person guilty of more than one offence, the senences should run concurrently. The sentences should run concurrently. The Supreme Court held the position by saying that “whenever the offences are of disposition or nature, they should run concurrently. Nwanfor v The State, the accused person was found guilty and sentenced for breaking into a store and possession of breaking instrument in the same transaction. The Supreme Court held that the sentence should run concurrently because they emanate from the same transaction.

 It is important to note that the sentencing of Evans will be based on the following guidelines and since it is clear that the nature of the offences committed by Evans are serious and that he is not of a good character coupled with the fact that he plays a major role in these crimes, he is to face a very heavy sentence. Also, the crimes committed are rampant. Court usually puts a heavy punishment for such crime to curb then. All the crimes committed are not limited by statute.

Evans will face a very heavy sentence. His sentencing will be done one after the other as a person should not be sentenced for all crimes at once.