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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 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 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.

 After a criminal defendant is convicted or pleads guilty, a judge will decide on the punishment to be meted out, and that process is called sentencing.

 To fully grasp the whole context of sentencing, the definition of sentence, the definition of sentencing, aim of sentencing, criticism of sentencing. The author of Black’s Law Dictionary defines a sentence as;

 The judgment that a court formally pronounces after finding criminal defendant guilt; or the punishment imposed on a criminal wrongdoer.

 According to Oxford Advanced Learner’s Dictionary, a sentence is a “particular punishment given by the court of law to an accused person.”

 According to Merriam-Webster’s Collegiate Dictionary, a sentence is a judgment, “one formally pronounced by a court or judge in a criminal proceeding and specifying the punishment to be inflicted upon the convict.”

Ekumanka in his book, Criminal and Penology, a Nigerian Perspective defines sentence as:

The act of imposing a penalty by a court on a wrongdoer for a crime or a wrongdoing and goes ahead to emphasize the core relationship between sentencing and punishment because you cannot talk about sentencing without some form of punishment.

His lordship Justice Douglas, in his paper titled Administration of Criminal Justice: Sentencing Policy presented at Conference of All Nigerian Judges, 1988 says:

 The term “sentence” or “judgment” in legal parlance may be said to denote the action of a court of criminal jurisdiction formally declaring to an accused the legal consequences of the guilt to which he has confessed or of which he has been convicted. Generally, therefore, a sentence is the punishment inflicted upon a convict at the end of the criminal trial.

 Sentences are formal legal consequences for criminal offences ordered by a judge or jury in trial court associated with a conviction of a criminal defendant.

 According to Merriam-Webster’s Collegiate Dictionary, sentencing is “to impose a sentence on” a convict in a criminal proceeding.

After a criminal defendant is convicted or pleads guilty, a judge will decide on the appropriate punishment during the sentencing phase of a criminal case. The sentence meted out depends on the philosophical principle used by the court and what the legal system regards as the purpose of punishment. The most common purposes of sentencing are:

* [Retribution](https://en.wikipedia.org/wiki/Retributive_justice)
* [Deterrence](https://en.wikipedia.org/wiki/Deterrence_%28legal%29)
* [Denunciation](https://en.wikipedia.org/wiki/Denunciation_%28penology%29)
* [Incapacitation](https://en.wikipedia.org/wiki/Incapacitation_%28penology%29)
* [Rehabilitation](https://en.wikipedia.org/wiki/Rehabilitation_%28penology%29)

[Retribution](https://en.wikipedia.org/wiki/Retributive_justice)

The main aim of the theory is that punishment imposed for no reason other than an offense being committed, on the basis that if [proportionate](https://en.wikipedia.org/wiki/Eye_for_an_eye), punishment is morally acceptable as a response that satisfies the aggrieved party, their intimates and society. Sentence must be proportionate to the crime

[Deterrence](https://en.wikipedia.org/wiki/Deterrence_%28legal%29)

 Deterrence serves as a means of putting a halt on the commission of crimes for the individual and the general public. To the individual, the individual is deterred through fear of further punishment and to the general public, potential offenders warned as to likely punishment. The punishments in deterrence are meant to instill fear into others so as to deter them from committing those crimes. Deterrence has punishment such as long prison sentences, public flogging or heavy fines.

[Rehabilitation](https://en.wikipedia.org/wiki/Rehabilitation_%28penology%29)

 The main aim of rehabilitation is to reform the offender's behavior through means such as community service orders, fines etc.

[Incapacitation](https://en.wikipedia.org/wiki/Incapacitation_%28penology%29)

This involves capital punishment, sending an offender to prison, or possibly restricting their freedom in the community for the protection of the public and to prevent the offender from committing further crimes.

 The courts of every nation have a set of guidelines that must be followed in the event of sentencing. These guidelines are provided to help the judge in decision making while sentencing a criminal offender in a conviction.

 Sentencing guidelines are a set of standards that are generally put in place to establish rational and consistent sentencing practices within a particular jurisdiction.

 Prior to the creation and development of sentencing guidelines, all states had a system of *indeterminate sentencing*.  Under that system, the legislature defined criminal conduct and established high maximum sentences.  Judges had almost complete discretion to impose any sentence up to the statutory maximum, and rather than pronounce a sentence with a specified prison term, the court would pronounce a range of time (e.g., 0-10 years). In indeterminate sentencing, the sentence was not fixed rather; it was subject to discretion at many viewpoints such that the true sentence could not be known until it had been fully served.

 The objective of sentencing guidelines is to set out the procedure for sentencing of corruption and related offences, offences against the person or property, homicide related offences, offences against the State, offences against public order and offences against morality. It has been argued that the Sentencing Guidelines actually increase unwarranted sentencing disparities. The guidelines are;

1. Nature of the offence
2. Character/ nature of the offender
3. Position of status of the offender
4. Rampancy of the offence
5. Statutory limitation
6. Concurrency of the offence
7. Mode of committing the offence.
8. Nature of the offence

 There are certain offences that 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. When brutality or the use of heavy force is involved, a heavy sentence would be levied on the individual. In the American case of **Gregge v Georgia**, the Supreme Court of America went on to uphold death penalty as an appropriate sentence for the offence of murder due to the nature of the offence. Mr. Evans committed grave criminal offences such as kidnapping, armed robbery, rape, defilement of young girls, ritual killings, extortion and obtaining property by false pretence which are regarded as very serious in nature. In the Nigerian case of **State v Osoelika and 7 ors**, a case of kidnapping and abduction at Enugu, the presiding Judge refused bail application due to prevalent and serious nature of kidnapping in Enugu and particularly South East zone of Nigeria, despite the fact that the said offence could be bailable.

1. Character/ Nature of the offender

 There are certain factors that are considered in the nature of the offender such as if he is a first time offender, previous record of the offender, age of the offender, The above proposition perhaps influenced 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 3 years was reviewed to 6 years on appeal. In contrast, in the case of **R v Williams**, a suspect aged 20 years, attempted rape on his victim with whom, he and others had been drinking at a hotel.

 The suspect had a good record and impeccable family background. He had no sexually related indictment and was not accustomed to drinking whisky which probably aroused his passion. He was convicted for attempted rape. On the basis of the above facts the court released him on probation and ordered him to pay £75 to his victim for bodily injury done to her by the convict. The above cases point to the fact that previous record of the convict goes a long way to affect the extent of punishment a Court may impose on individual’s cases even if the offences are the same. In the case of **State v. Obagha**, the defendant aged 70 years, was convicted of manslaughter due to provocation; the court greatly considered his age and sentence him to 3 years imprisonment without hard labour. In the case of **State v. Olowolaiyemo**, the defendant who was a hunter mistakenly shot and killed his victim who was on top of a palm tree taking him for a monkey. Court greatly considered his age of about 70 years and poor health and sentenced him to 12 months imprisonment or fine of 200 pounds for the offence of manslaughter. Mr. Evans is not a person of good character as he has been involved in various grave crimes which are serious in nature.

1. Position of status of the offender

 The position of the offender is another factor as it can work in two ways, because the position of the offender is high, his sentence should be high to serve as a means of deterrence or, because his position is high, his sentence should be low. The court would consider a lighter sentence for the holder of a high position when the offence is done negligently or it is not serious.

1. Rampancy of the offence

 Court usually takes into account the fact that a particular offence is rampant in the community. While lack of rampancy of the offence is a mitigating factor, the prevalence of it aggravates the punishment. Where an offence is prevalent, Courts have always thought that severity of sentences imposed will act as a deterrent and discourage others from committing similar offence. The court’s sentence will act as a deterrent not only for the accused but also for the general public. 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 7 years imprisonment each by Ado Ekiti State High Court for stealing a 7-month-old child because stealing of children was prevalent in that community at that material time. The charges that Mr. Evans has been found guilty of; kidnapping, armed robbery, rape, defilement, ritual killing, extortion and obtaining property by false pretence are crimes that are rampant in today’s society and therefore are aggravating factors.

 Departures are allowed in cases involving substantial assistance to authorities in the investigation or prosecution of another person who has committed an offense. Indeed, the Sentencing Reform Act even allows a departure below the applicable statutory mandatory minimum in such cases. There is no penalty for refusal to assist authorities.

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