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**ACTIVITY: ASSIGNMENT ON SENTENCING**

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**ANSWER**

**INTRODUCTION**

The commission of a crime and the subsequent intervention by the law enforcement agencies is what being the criminal justice system in Nigeria. The system has the power to arrest, arraigned, try and punish offenders according to the set law. A criminal trial usually involves the government,the society and the offender who committed the crime or has been alleged to have committed the crime.

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.

**Sentencing** is the prescription of punishment by the court to a person who has been convicted of a crime. After an accused person has pleaded guilty or has been found guilty, the preceeding judge or magistrate then enters judgment or conviction and thus sets a day aside for sentencing.

Another definition was given in **ICHI V STATE in 1996 (9 NWLR PT 470, Pg 83-89)**

A very accepted definition would be that a sentence is a definite order pronounced by a court of competent jurisdiction at the end of a criminal trial after finding the guilt against the accused person.The Nigerian Criminal Code and the Penal Code as well as other offence-creating statutes specify the quantum of sentences, while the sentences themselves find their legitimacy in the criminal Procedure legislations applicable at the states and federal levels.

**The purpose of sentencing**

Criminal law theorists believe that sentences serve two purposes. First, they serve the goal of deterring future crime by both the convict and by other individuals contemplating a committal of the same crime. Second, a sentence serves the goal of retribution, which posits that the criminal deserves punishment for having acted criminally. When sentencing, a judge must impose the least severe sentence that still achieves both goals, while also considering the need for societal protection. It also serves the goal of rehabilitation and to prevent reoccurence of such a crime. The sentences whether of imprisonment or payment of fine emanates from the digression of the judge after the finding of guilt and flows logically from the conviction.

Sentencing guidelines are designed to indicate to judges the expected sanction for particular types of offences. They are intended to limit the sentencing discretion of judges and to reduce disparity among sentences given for similar offences. Although statutes provide a variety of sentencing options for particular crimes, guidelines attempt to direct the Judge to more specific actions that could be taken.

The supreme court thus laid down  **6 BASIC PRINCIPLES OR GUIDELINES** to aid a court in reaching a reasonable just and fair sentence. These guidelines are

**1)The nature of the offense 2) Character and nature of the offender 3) Position of the offender among his confederate 4) Ramapancy of the offense 5) Statutory limitation 6) Concurrency of the sentence .**

For a better understanding and more in depth look, these guidelines shall be considered briefly.

**1) THE NATURE OF THE OFFENCE:**

As a principle of law and practice, the nature of the offence a defendant has been convicted of goes along way in determining the extent of his sentence or punishment. The law is clear that a person cannot be found guilty of an offence in which as at the time committed does not constitute a crime in any written law and it's punishment stated.

As stated in **Adeye & ors v state,** a case of robbery by violence which was tried by the high court of Western state, the court imposed a sentence of **eighteen years imprisonment** on the accused person, on appeal,the Western state appeal reduced the sentence to **10 years.** The accused person unsatisfied with the judgement appealed to the Supreme Court and the SC reinstated the **18 years years in prison and 3 strokes of cane.**  The supreme Court held they the sentence was too linient because of the seriousness of the case.

**APPLICATION**

Applying this to the scenerio, Evans would definitely get a heavier punishment since the nature of his offences which include kidnapping, raping, illegal emigration, assault, rape, armed robbery, defilement, ritual killings as well as obtaining property by false pretense are very grievous. The nature of his offence already shows that he committed series of aggravating offences and thus cannot get off with an easy punishment. As the presiding judge, Evans would be charged with a multiple count offence.

**2) CHARACTER OR NATURE OF THE OFFENDER**:

As a principle of law or as a rule of evidence, character evidence is inadmissible in law. However, when the character of the accused person is in question, the nature/ evidence of his character becomes admissible evidence in law. In **Adeyeye v The State SUPRA ,** part of the reason advanced for the reinstatement of the **18 years penalty** was that the accused person had earlier been convicted of an offence. It would appear that the court worked on the assumption that anyone with a previous conviction had lost out in terms of mitigating the sentence. In **Adeleye and Ajibade,** the appellant's bad character was significant to the restoration of a heavier punishment on them. This also occurred in **R v State.**

**APPLICATIONS**

In relation to the scenerio, it points out that Evans was a kidnap kingpin or pivot which means that he was a huge kidnapper, assaulter an armed robebr thus he was a notorious crime guru considering other offences attached, this means that Evans is liable to any punishment given to him as his behaviour can be an evidence of notoriority. The case of **R v Bangaza** could apply to his illegal emigration.

**3) POSITION OF THE OFFENDER AMONGST HIS CONFEDERATE:**

This could be divided into two; A) Offender playing the minor role B) Offender playing the major role. For the purpose of this write up the writer shall be considering the offender playing the major role

B) Offender playing a major role.

The gang leader or pivot of the crime should be visited with more severe punishment than the minor offender. The above idea was given judicial recognition in the case of **Queen v Muhammed & ors,** where the first appellants who was the leader was given 8 years in prison and the others 5 years in prison.

In **State v Kerenku,** although the appellant was found not to be the leader of the operation but she played a leading role in the crime commission and must this be taken into consideration.

Another case is the case of **Ihum v Tiv National Assembly** Where everyone else hot 6 years for rioting and the sixth appellant got 8 years for being the moving force.

**APPLICATION**

This would definitely relate to the scenerio given as Evans has been identified as a kidnapping kingpin. A kingpin is a important person in an undertaking or organization.Thus,Evans is the leader of the operation and should get a severe sentence compared to anyone found to have a sister in the operation or crime commission.

4) **RAMAPANCY OF THE OFFENCE:**

Where an offence is rampant or prevalent, courts always thought that severity of sentences imposed will aid in stamping out the crime. In **R v Hassan & Owolabi,** the accused was sentenced to **5 years** in prison for stealing and another **5 years** for foggery by the high court. On appeal, the Supreme Court expressed the view that Fraud on the customs were shocking prevalent and the foggery of commercial document strikes at the root of all credit thus, they were not disposed to reduce the sentence by even **1 day.**

In the case of **State v Anor,** the two parties wee sentenced to **20 years in prison** due to the courts view on the fact that robbery on roads and water was rampant.

This means that rampant of the offence is one of the most necessary considerations as it can be a mitigating or aggravating fatcor depending on the crime.

Certain offences are considered to be grievous example is sexual offences especially when it involves children as victims ( This can be seen in the case of **State v Adegboye** where the defendant was sentenced to 3 years in prison for putting his finger in a little girl hawking groundnut. This is also seen in **Iko v State** ), robbery with violence is also considered grievous (**Olanipekun v State)**.When an offence is not prevalent the offender might be lucky to get out of the offense without a long sentence this is seen in the case of **Onyilokwu v COP.**

The gravity of an offence can also be licensed to the Ramapancy of the offence. This can be see in the case of **R v Ozuloke,** where his offence was considered to be the most revolting thus getting him a **20 years sentence.**

The court is likely to impose a heavier punishment on a crime that is both rampant and grievous In an attempt to stamp out such crime in the society.

**APPLICATION**

In the given scenerio, Evans is not only involved in kidnapping also armed robbery and has been involved in series of assault( not once or twice or thrice),rape, defilement of young girls which is considered grievous, ritual killing another very serious offence and also obtaining property by false pretense. In the recent years the offence of raping, kidnapping, illegal emigration,defilement of young girls have been found to be very rampant as well as very grievous therefore based in laws provided in the criminal code or any other written law for sentencing, Evan would be sentenced with an heavier punishment because his offences can be considered as most revolting.

5)**STATUTORY LIMITATIONS:**

In criminal statute of limitations,it is the limitation that restricts the prosecutor from charging a person for a crime after a certain period of time stupulated by law has passed meaning that the accused person is essentially free. This means that the case becomes statute barred. It dictate the time period within a legal proceedings must begin

However, not all crimes are governed by statute of limitations ground. In some states, sexual offences with minors, foggery, kidnapping, crimes of violence, arson have no statutory limitations.

States have adopted systems that classify offences into: a) felony b) misdemeanor c) simple offences

In Nigeria, there are two types of statutory limitations; a) statutory maximum b) alagisterial jurisdiction limitation.

It is stated that when a statute itself stipulates term of imprisonment, no court should exceed it's limit. In the case of **Queen v Eyo& ors,** a case of unlawful assembly, the High court sentenced them to **5 years** in prison on appeal the Supreme Court reduced it to **3 years** as that is the maximum number of years stipulated by the law. Also, in the case of **Aremu v IGP.**

In the case of **Mordi v COP,** the magistrate court imposed a Jail term of **2 years** on appeal to the high court, a **10** **years** sentence was given. The supreme Court in another appeal reinstated the 2 years sentences earlier given because That was the limitation of the magistrate court.

**APPLICATION**

Kidnapping, sexual related offences, violent crimes and felonies or federal offences in general do not have a statutory limitation, so Evans cannot hide under that fact to get himself lesser sentencing. Although Evans is guilty of series of crime And is a notorious criminal, the judge cannot because of that sentence him harshly based on that or personal emotions to the fact that he is a notorious criminal thus the law has to be strictly followed in sentencing him. It should also be noted that offence who have statuory limitation have a longer period before their limitation expire but in exemption of treason who have a limitation of 2 years.

6) **CONCURRENCY OF THE SENTENCE:**

There are law governing concurrent and consecutive sentences. Concurrent sentences is where the sentences run concurrently, defendants serve the sentence at the same time , while in consecutive sentences the defendant has to finish serving from one offence before they start serving for the other sentence. The same factors that judges consider when deciding on the severity of the offence ( the criminal's past record and behavior) may also affect the decision on whether the sentences should run consecutively or concurrently. In the case of **Nwafo v the state,** it was held by the supreme court that the sentence should run concurrently for breaking in and possession of instruments for breaking in because they were offences that emanated from the same crime.

**APPLICATION**

However, considering the scenerio of the give case, Evans cannot be let to run his sentence concurrently because they are of different crimes; kidnapping, armed robbery, however his offence of assault, rape and difilement can run concurrently.

Considering all 6 factors in sentencing, im conclusuon Evans would have a very heavy punishment and also due to his behaviour of notoriority, he would not be able to get a smaller punishment as a first time offender. Also the nature of his offences are very grievous and thus his offences would run concurrently.

As the presiding judge, according to the laid down law, Evans would be punished according to the Administration of Criminal justice or the penal code or the criminal code consecutively but then his sexual related offences would run concurrently.