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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.

**ANSWER**

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.

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 offences by preventing the offender from re-offending or correcting the offender so that the criminal motivation or inclination is removed or by discouraging or educating other potential offenders. These are known as reductive justification. As such, the key purpose of sentencing includes:

1. Punishment

2. Deterrence (general and specific)

3. Rehabilitation

4. Denunciation and

5. Protection of the community.

These purposes overlap and none can be considered in isolation from the others when determining what an appropriate sentence is in a particular case. They are guide posts to the appropriate sentence but sometimes they point in different directions.

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.

Penal statutes often provide for the maximum punishment for committing an offence; this maximum is not mandatory, the court has discretion to impose punishment that is less than the maximum, and the court is not bound to give reasons for doing so. The appellate court shall not interfere with the discretion of the court to impose punishment unless it is made a ground of appeal.

The type of Sentences that may be imposed on a convicted person includes:

1. Death penalty: see Section 319 of the Criminal Code Act Cap. C38 Laws of the Federation of Nigeria, 2004; see also Section 220 of the Penal Law Cap 89 Laws of Northern Nigeria, 1963.

2. Imprisonment: this can be defined as a term of judicial sentence available for a convicted offender of adult age, involving incarceration in prison for either life or a specified period of time. A term of imprisonment may be imposed with or without hard labour. Where no specific order is made, it is deemed to be with hard labour. See Sections 377, 381 and 395 C.P.A. Concurrent and consecutive sentences are also considered where the accused had been previously convicted and sentenced, the new sentence may commence at the expiration of a current sentence previously imposed on the accused. In R v Savage 20 N.L.R. 55, it was held that in the situation above, the new term could not be ordered to commence at the expiration of more than one term of imprisonment. Where there are sentences in case of conviction of several offences at one trial and the sentence in respect of each offence is to run concurrently, the aggregate term of imprisonment shall not exceed 4 years or the limit of jurisdiction of the trial court whichever is greater. But under section 24(2) of the CPC, the court may impose a sentence twice its limit of jurisdiction to punish.

3. Fines: Sections 382 of the CPA and 23 of the CPC provide for the power of a court to impose fine in lieu of imprisonment. A fine is a payment of money ordered by a court from a person who has been found guilty of violating a law. It may be specified as the a punishment for an offence, usually a minor offence, but could also be specified and used as an option to imprisonment for major crimes or a complement to other punishments specified for such crimes. See section 129 Criminal Code, Section 389 C.P.A, Section.74. Penal code. In Price Control Board v Ezema (1982) 1 N.C.R. 7, it was held that even when the law creating an offence provides that the accused shall be ‘sentenced without option of fine’ the court still has discretion to impose a fine. But where the law provides for the minimum (not maximum) period of imprisonment to be imposed for the commission of an offence, the court cannot impose fine in lieu of imprisonment.

Assessment of fine- Section 382(2) & (3) of the CPA provides that:

• In the case of a high court, the amount of the fine shall be in the discretion of the court, and any term of imprisonment imposed in default of payment of the fine shall not exceed two years

• In the case of magistrate courts, the amount of the fine shall not exceed the limit of the scale provided for by the relevant law establishing the court or any other law. See Section 13 to 18 CPC and Goke v Police (1957) W.R.N.L.R. 80

Imprisonment in default of payment of fine- Section 392 of the C.P.A provides procedures a court must follow before an accused can be imprisoned in default of payment of fine:

• Issue a warrant of commitment

• Allow time (days of grace) for the payment of the fine

• Direct payment of the fine to be made by installments

• Provide security either with or without sureties for the payment of the fine.

Under the C.P.C before an accused can be imprisoned in default of payment of fine, the court may order the attachment of his moveable and immovable properties. If the properties attached cannot satisfy the fine, the accused may be imprisoned subject to the limit contained in section 74 of the Penal Code.

4. Caning or whipping: Caning is another form of punishment which the courts are empowered to impose although it is important to note here that as a form of sentence, it has generally fallen into disuse. Caning may be considered for use as a punishment, or it may be in lieu of any punishment or it may be in addition to other punishment. The courts may pass a sentence of caning of up to twelve (12) strokes. Where a person is convicted of one or more offences at one trial, the total number of strokes awarded must not exceed 12.The number of strokes passed must be specified in the sentence. The following categories of persons cannot be subjected to caning:

• Persons above the age of 45

• Women

• In eastern Nigeria, only a juvenile offender can be subjected to caning. See Section 386(1) C.P.A and Section 77 P.C.

5. Forfeiture: forfeiture may be more in the nature of an ancillary order made after conviction than a substantive sentence. It is usually imposed in the case of offences involving bribe, where the property which has changed hands in the course of commission of such an offence may be ordered to be forfeited to the state. See Section 19 of the Criminal code and Section 111 Penal Code.

6. Hadi Lashing: this is provided for only in the states of northern Nigeria under the C.P.C. It can only be inflicted on a Muslim. Hadi lashing can be inflicted only where the offender is guilty of any of the following:

• Adultery

• Drinking alcohol

• Defamation

• Injurious falsehood.

Hadi lashing is inflicted in an enclosed place and the public is permitted to watch. It is a kind of symbolic punishment meant to disgrace rather than inflict pain on the accused.

Criminal prosecution aims at the conviction of the accused or the defendant. The conviction goes with sentencing to some form of punishment or sanctions pronounced by the trial court. However, when a convict has served out the terms of his or her sentence or punishment, he or she becomes free and clean of any blame or iniquity which is attributable to the crime that led to his or her trial and conviction. The decision taken by the prosecution as to whether to proceed at all, what charges to lay, and in what form to lay the charges (sometimes the subject of plea bargaining can have a profound effect upon any sentencing outcomes which may be arrived at. The particular form the adjudication takes may place important restraints upon the sentencing decisions that can be reached.

**Laws governing sentencing practices include;**

* **The nature of the offence**

The nature of the offence is a great determining factor of the sentence to be given to the offender. Factors like the type the kind of offence committed; whether it was a felony, a misdemeanour or a simple offence and factors surrounding the commission or omission of the act; whether it was an accident, triggered by provocation and other such factors will be put into consideration.

Provocation:

Provocation is statutory regarded as a mitigating factor in Nigerian Law in the sense that when a plea of provocation succeeds; It reduces in cases of murder or culpable homicide punishable by death. The mandatory death sentence which follows conviction to terms of imprisonment the maximum of which is life imprisonment. It is of interest to note that life imprisonment has been interpreted as equivalent of twenty years imprisonment. The existence of provocation as a mitigating factor offers opportunities for our judges to reflect the distinctive culture of our people in their interpretation of provocative conducts. The view established in old cases decided during the colonial period has been the ‘station in life test’’. It in effect divided the whole population into civilized and uncivilized literate and illiterate. The uncivilized who usually included farmers, fishermen, labourers etc. and who were supposed to be easily provoked by what would not provoke a civilized person. The accuracy of the psychological conclusion reached by the colonial (and more recently Nigerian) judges has never been tested. Opinions are now growing against the conclusion. The following are some of the conducts that have been recognised by courts as provocative. Calling a Moslem a pagan or a dog especially by the wife; see ***State V Osunmilli Ewho, 19691 All NLR 280*** coming close to the appellant asking him for something and subsequently dragging him a few yards; ***R V Shanawa & Sokoto Native Authority, 1962 1 NMLR 296*** attack by a thief on appellants friend; ***Queen V Stephen Oji, 1961 1 All NLR 288*** slapping of a co-worker to whom six naira (N6.00) was owed on demanding repayment; ***The State V Mohammed (1969) NMLR 296***; gripping of the weaker person by the throat by the stronger one. When attempt was made to find rational explanation for the court’s decision in regarding some conducts as provocative and others as non-provocative, one could not but conclude that they defied rationalisation. Professor Adeyemi in a small study spanning over few years, examined the disparity in sentencing in cases where provocation was pleaded with the view of finding out the reason. He concluded that: ‘’It is apparent therefore that one cannot adduce any convincing rational explanation for the sentencing disposition of the court and its judges…….it is seems however that the most plausible explanation may be found in judicial identity and characteristics rather than in the facts of the cases.’’***Adu Yalwa and Ors V The State, 1970.*** His English counterpart, Dr. Ashworth came to almost similar conclusion when he said: ‘’One of the disquieting results of this brief survey of sentencing in provocation cases is the frequency with which the actual sentence appears to be at variance with the declared principles…………’’(***The State V Mohammed, 1969***)

* **The nature/character of the offender**

In sentencing individuals, the courts usually consider the offender’s criminal record, his character and other factors relating to him as a person. Some of these factors include;

Old Age:

Nigerian courts have shown reluctance in allowing the law to run its full course in cases involving elderly people. There, sentences are often as in (State and 2 Ors, 1983) reduced considerably because it is thought that they no longer constitute threat to the society. Also there poor health and the reluctance of the courts in allowing them die in jail contributed in no small measure in the light sentence given in (State, 1970)); a manslaughter case where a 70 years old man recklessly shot and killed somebody on top of a palm tree on the grounds that he mistook him for a monkey, and also in (Akanbi) a case involving a 75 years old man who was convicted of stealing property valued at one hundred naira (N100.00) from the Nigerian Port Authority.

First Offender Status:

It will appear from records that our courts are reluctant in fully punishing offenders who are committing a crime for the first time. This attitude is demonstrated by the Supreme Court in ***Anfistah Uwfifcw V State***. This was a case of causing death by dangerous driving. A sentence of three years imprisonment was considered severe because apart from the fact that the appellant was a learner driver who at the material time was under the control and guidance of a qualified driver, he was most importantly it would appear, a first offender, and his sentence was reduced to one year imprisonment. Similarly, the court of appeal had to reduce the sentence imposed on participants in the civil disturbance that took place in Lafia town in ***Saku and Ors1 NWLR 516*** on the ground that the first offender statutes of the appellants were not adequately considered by the trial court. The first offender status could be combined with other mitigating factor to reduce a prison sentence. In ***Wilson Ebisua V COP*** LD/16CA/71 Lagos High Court unreported cited in Okonkwo & Nasih the appellant was convicted under Section 88 of the criminal code for behaving in a manner likely to cause a breach of peace and was sentence to a term of imprisonment without an option of fine. On appeal, the high court observed thus: ‘’There is no appeal on sentence but to sentence an accused who is a first offender to a term of imprisonment without the option of a fine or even a warning for merely uprooting the iron post on another’s land is to completely misconstrue the object of criminal imprisonment.’’ The sentence was varied to a fine of one hundred naira or one month imprisonment with hard labour. Furthermore, in (Olayinka, 1986) the appellant was sentence to nine months imprisonment upon conviction on a charge of simple assault which carried a maximum sentence of twelve months imprisonment. On appeal, the sentence was reduced to seventy naira (N70.00) fine or three months imprisonment. Courts have also used the first offender status to differentiate in sentence awarded in cases where more than one offender is involved, for instance, in ***Adudu v Gunni WRNLR***, 188 where the sentence of one them with previous conviction was upheld that of the first offender was reduced.

* **The position of the offender among his confederates**

As prescribed by law, an offence committed with the cooperation of different parties where the parties played different roles, from the party who gave counsel and ordered the commission of crime down to the party who executed the plan and the parties who concealed the knowledge of the crime from the appropriate forces will all have different degrees of punishment based on their roles.

* **The rampancy of the offence**

The rampancy of the commission of an offence in a particular area usually affects the sentencing of offenders who have committed such an offence. The punishment and sentence for such an offence has been seen to be usually more intense or more serious than it would be if the offence was not as rampant.

Like in some Southern states, the offence of kidnapping has its penalty as life imprisonment because of how rampant this crime had become.

* **Statutory limitation**
* **Concurrency of the offence**

Evans has proven guilty to all the crimes he has been charged with including kidnapping, armed robbery, rape, defilement, ritual killing extortion and obtaining property by false pretence. All these laws will be put into consideration;

• The nature of the offence: all the offences Evans has been found guilty of are felonies and mens rea was present as he committed all of these intentionally and voluntarily. He will be sentenced to face the full wrath of the law in relation to these crimes committed.

• The nature/character of the offender: It was clearly mention that Evans is a notorious kidnap kingpin and armed robber, who has also been involved in series of assault, rape and defilement of young girls. It was established in the scenario that Evans is not a first time offender and is notorious for the aforementioned crimes.

• The position of the offender among his confederates: From the given scenario, it seems like Evans has actively been procuring and executing the crimes he was found guilty of.

• The rampancy of the offence: The offence of kidnapping, armed robbery, rape and ritual killing are rampant in Nigeria today.