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QUESTION: WHAT ARE THE THINGS THAT WILL GUIDE YOU IN SENTENCING EVANS HAVING REGARD TO THE GUIDELINES LAID DOWN BY THE SUPREME COURT?

INTRODUCTION

The right to life, personal liberty and freedom of movement are amongst the fundamental human rights of every citizen guaranteed by the Constitution of the Federal Republic of Nigeria, (1999 As Amended). Arising from the sanctity of these rights, the deprivation or imprisonment of a citizen, be it for a day, must be in strict compliance with the due process of the law. The right to freedom can only be denied after a pronouncement of guilt by a law court or after an offender elects to plead guilty upon arraignment.

The administration of criminal justice system is an embodiment of diverse institutions respectively engaged in the detection, prosecution and adjudication over offenders culminating to conviction and sentencing.

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 a 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 solutions to the same problem.

Meaning of Sentence

The term 'sentence' or 'Judgment' may denote the action of a court of criminal jurisdiction formally declaring an accused the legal consequences of 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 trial.

A sentence is the pronouncement by the Court, upon the accused after his conviction in criminal prosecution, imposing the punishment to be inflicted.

It is regarded as the judgment that a Court finally pronounces after finding the defendant guilty or the punishment imposed on a criminal wrongdoer. Whereas, sentencing is a post-conviction process of ascertaining and imposing penalties on offenders it is the final stage of the trial process when the Court has found the defendant guilty or the defendant has pleaded guilty, the judge then decides on a sentence appropriate for the offence established, thus the sentence is at the post-conviction stage when the defendant is brought before the Court for the imposition of a penalty.

In effect, sentence can only be imposed in the manner prescribed by the law after the establishment of proof of committing an offence beyond reasonable doubt. A judge must not exceed the term prescribed in the statute creating an offence nor must he exceed the quantum prescribed in punishing the offender. In passing a sentence, a judge should be dispassionate in his decision and in the exercise of his judicial discretion.

It is noteworthy that the Federal Capital Territory Judiciary took a leap forward in codifying sentencing guidelines and principles in order to assist judges and Magistrates in the sentencing proceedings after conviction. The lofty initiative is known as the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016, The guidelines was enacted by Hon. Justice Ishaq Bello, the Chief Judge of the High Court of the FCT on the 19th October, 2016. Part 1 of the sentencing guidelines resonates the objectives, guiding principles and scope of the Guidelines, Section 1 provides thus:

“The objective of this practice direction is to set out the procedure for sentencing of corruption related cases, offences against the person or property, homicide related offences, offences against the state, offences against public order and offences against morality, for the purpose of ensuring uniformity in sentencing to the provision of Sections 416 and 311 of the Administration of Criminal Justice Act, 2015”

The rationales behind the application of the procedural steps prescribed in the guidelines are of immense assistance to judges to operate as parameters or templates that should be taken into consideration during sentencing proceedings. They substantially replicate the considerations prescribed in ACJA for sentencing in respect of the underlisted:

- a) Corruption and related offences
- b) Offences against person
- c) Homicide related offences
- d) Offences against public order
- e) Offences against morality
- f) Offences against the state.

Evans having been found guilty of this charges, to sentence Evans appropriately this 6 guidelines have been laid down by the supreme court to be followed to arrive at a fair, just and reasonable sentence. This 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 courts to more specific actions that could be taken.

Generally there are 6 guidelines in sentencing are

1. Nature of the offence
2. Character / nature of the offender
3. The position of the offender
4. The rampancy of the Offence
5. Statutory Limitation
6. Concurrent and consecutive sentences.

NATURE OF THE OFFENCE

As a principle of Law and practice the nature of the offence committed by an accused person of which he has been found guilty of goes a long way in determining his punishment. The law is clear that a person cannot be convicted of an offence which at the time is not considered a crime as at the time by any written law and its punishment clearly stated. As seen 8n the case of ***Adeyeye and others v. State*** For the offence committed which was robbery by violence the Supreme Court reinstated the period of 18 years with three strokes of cane the former punishment was considered to be too lenient. Also in *Adesanya vs The Queen* the case the aforementioned was convicted of forgery and was sentenced to pay a fine the punishment was considered too lenient and he was subjected to imprisonment.

CHARACTER/NATURE OF THE OFFENDER

As a principle law and rule of evidence or vice versa character evidence or evidence of character is in admissible in law. However when the character of the accused person is in question the evidence of his character becomes admissible in law. In ***Adeyeye v. The State*** supra part of the reasons advanced for the reinstatement of the earlier punishment (18 years) was that the accused person was 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 and Ajibade* the appellant's bad character was significant in restoration of a heavier punishment on them. In ***R vs State*** The fact that the appellant had been previous convicted for defilement this led the court to increase the sentence from 18 months to 5 years with hard labour.

THE POSITION OF THE OFFENDER AMONG HIS CCONFEDERATES

1. When the offender plays a minor role

In ***Enaoro vs The Queen*** a case of treasonable felony. Enaoro was sentenced 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 not be more than that of 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 who instigated. In that case the late Awolowo who was the leader got 10 years in jail. The leader is usually the epicenter of activities the moving force and the progenitor of the crime.

2. Playing a major role

The offender who has played a major role in an offence is usually visited with more severe punishment than those inflicted on minor participants the above idea was given judicial recognition in *Queen vs Muhammed and others*. While the first appellant who was the leader was given a minimum sentence of 8 years the rest were given a maximum of 5 years.

THE RAMPANCY OF THE OFFENCE

Where the offence is rampant or prevalent the courts have always thought that severity of the punishment will stamp out the crime. In *R vs Hassan and Owolabi* the courts were adamant on the punishment of forgery and stealing as fraud in the customs was prevalent. So also in *State vs Ayegbemi* It was also because robbery was rampant that they were sent to 20 years imprisonment. (***State v. Another***)

STATUTORY LIMITATION

There are two types of statutory limitation in Nigeria:

1. Statutory Maximum
2. Magisterial jurisdiction limitation

In essence wherever there is a statute stipulating the punishment for any offence the court cannot go beyond that punishment. In ***Queen v. Eyo*** and others a case of unlawful assembly the high court sentenced them to 5 years imprisonment on appeal the Supreme Court reduced the sentence to 3 years because it was what was stipulated by law (maximum sentence). Also in ***Mordi vs C.O.P*** the magistrate sentenced the accused to 2 years then on appeal the high court increased it to 10 years. On appeal the Supreme Court reinstated the decision of the magistrate court.

CONCURRENT AND CONSECUTIVE SENTENCES

When a person is found guilty of more than 2 offences at a time in Nigeria. The general rule is that the sentences should run concurrently. The Supreme Court held this position by saying, whatever the offences are similar or of similar nature /disposition they should run concurrently. In ***Nwankwo vs The State*** the court held that the sentences should be run concurrently because the offences were similar. Just like Evans in the above question his offences are similar and they would be run concurrently.

Conclusively, these guidelines aim to promote a fair, just and reasonable trial of the offender(in this case Evans) and help the presiding judge to reach a judgement which is not lenient neither also harsh and is measurable to the offence committed by Evans.