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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, we have found Evans guilty of all 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 regards to the guidelines laid down by the supreme court?

SENTENCING

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. In some circumstances, the judge is able to enhance or reduce the sentence based upon factors specific to the crime and the defendant. A sentence may include fines, incarceration, probation, suspended sentence, restitution, community service and participation in rehabilitation programmes.

The fundamental purpose of sentencing is to contribute along with the crime prevention initiative, the respect of the rule of law and the maintenance of the just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives

GUIDELINES FOR SENTENCING

Sentencing guidelines are a set of standards that are generally put in place to establish rational and consistent sentencing practices within a particular jurisdiction. The supreme court laid down six basic principles or guidelines to aid court in reaching a reasonable, just and fair sentence.

1. The nature of the offence.
2. Character to the nature of the offender.
3. Position of the offender among its confederates.
4. The rampancy of the offence.
5. Statutory limitation.
6. Concurrency of the offence.

➤ NATURE OF THE OFFENSE

As a principle, of law, and practice, the nature of the offence committed by an accused person (the defendant) of which he has been found guilty of, goes a long way in determining the extent of his punishment. The law is clear that a person cannot be found guilty of an offence which as at the time being committed does not constitute a crime in any written law and his punishment clearly stated. In *ADEYEYE AND OTHERS VS STATE*, a case of robbery by violence tried by the high court of the western state, the court imposed a sentence of 18 years' imprisonment of the accused person. on appeal, the western state appeal court reduced the sentence to 10 years. The accused person unsatisfied with the appeal court decision yet appealed to the supreme court. The supreme court reinstated the 18 years with three strokes of cane, the supreme court stated that their sentence of the appeal court was too lenient because of the seriousness of the offence. Also in *ADESANYA V. THE QUEEN* in the case of forgery and the principle was so established that only in exceptional cases can a fine be sufficient or appropriate punishment for forgery in court processes. The seriousness of the offence, its nature, the gravity makes forgery or court processes

grievous. In this case, the accused person having committed the offence of forgery was sentenced to pay fine on appeal at the instance of the accused person. The court held that the payment of fine was too small a punishment for the grievous offence of forgery, hence imprisonment. See also, *ETIM V THE QUEEN* in the case of manslaughter, unintended homicide either by provocation murder or automobile accident homicide, there is a tendency of the court to impose slight penalties/punishments as opposed to provocation murder. In *IDOYE V THE STATE*, the accused person drove his car at night without headlamp in a hilltop area in the process killed a pedestrian, he was sentenced to 5 years' imprisonment from the high court in addition to 10 years' suspension from driving. The supreme court reduced the sentence to $2\frac{1}{2}$ years' imprisonment and 5 years disqualification from driving.

Similarly, in *MOHAMMED V COP*, the accused person who had never driven in his life jumped into a car a killed some pedestrians. He was sentenced to 3 years' imprisonment and 10 years' disqualification from driving. The supreme court reduced his sentence to 18 months in prison and 15 years' disqualification from driving.

In contrast, in provocation man slaughter, there is a tendency to impose an average term of 10 years. In *ADEKANMI V STATE*, the accused person killed his wife in the sudden overflow of emotion when she told him that their children belonged to her lover and that, he is imposed a term of 15 years'.

The *Chukwu OBAJI V THE STATE* sentence of 15 years was also imposed for provocation. Perhaps the disparity between auto crash cases and man slaughter provocation cases can be traced to class differentiation. Being that auto crash cases are more likely to occur among members of upper and middle class while those in man slaughter provocation are likely to be from the lower class/local or illiterates. Provocation is a statutory recognized criminal defense which serve as a mitigating factor and reduce cases of murder to manslaughter. The maximum sentence for man slaughter is life imprisonment.

However, judges employ their discretion in determining the extent of sentence to the accused convicted.

➤ **CHARACTER OR NATURE OR RECORD OF OFFENDER**

On the principle of law, as a rule of evidence, character evidence or evidence of character is inadmissible 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 STATE SUPRA*, part of the reason advanced for the reinstatement of the 18 years was that the accused person had been convicted of an earlier offence. It would appear that the court worked on the assumption that anyone with a previous conviction lost out in terms of mitigation of the sentence.

In *ADELEYE V AJIBADE*, the appellant's bad character was significant in the restoration of a heavier punishment on them.

In *REGINA V STATE*, the fact that the appellant had been previously convicted for defilement. This led the court to increase his sentence from months to 5 years' imprisonment with hard labour.

In *R V BANGAZA* with a heavy stick, the two accused persons committed a deliberate assault on the deceased with the intention to do him grievous harm by way of retaliation for an assault committed by the deceased children on the appellant's younger brother. Death resulted and the appellant has been charged (determinate offences, indeterminate) therefore, convicted and appealed after the murder in 1950 the appellant ran away to a place in Borno. They surrendered themselves early in 1959 and were tried in December 1959.

At the time of their offence, the appellant was under 12 years, but old enough to be criminally responsible. By the time they were convicted, they were 17 and more, dismissing the appeal, and holding that they were rightly sentenced to death.

In *Adenoma CJN* as he was said, under section 368(3), CPA. It is the age of the offender at the time of his conviction that is material and it seems clear that the appellant cannot impose the provision of the section but responsible authorities would no doubt give such weight as he links fit to the possibility that if the appellant had not run away, and had been brought to trial at once, the section would have applied thus, the appellant's appeal was dismissed.

➤ **POSITION OF THE OFFENDER AMONG ITS CONFEDRATES**

-Playing a minor role

ENAHORO V QUEEN in the case of treasonable felony; enahoro 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 never be more than the leader, the leader of the gang should be punished more severely than the lieutenants this is to affirm that those who instigate should get a higher punishment than those instigated. In this case the late AWOLOWO; the leader got 10 years. The leader is always the epicenter of the activities the moving force and the progenitor of the crime.

Playing a Major Role

The offender who has played the major role in the commission of a crime is usually visited with more severe punishment than those inflicted. The above idea was given judicial recognition in QUEEN V MOHAMMED AND OTHERS; while the first appellant who was the leader was given a maximum sentence of 8 years imprisonment, the other parties were given the maximum sentence of 5 years imprisonment. In STATE V KEREKU, although the appellant was found not to be the leader, the court was viewed that he played a leading part in the incident and must take that into consideration. Also in IHON & ANOTHER V TIV NATIVE AUTHORITY; where the appellants were all involved in a riot in which many animals were maimed and destroyed, they all got sentenced totally for 6 years imprisonment except the 6th appellant who got 8 years imprisonment for being the moving force of the riot.

➤ RAMPANCY OF THE OFFENCE

Where an offence is rampant, courts have always thought that the severity of sentence imposed will aid in stamping out the crime. R V HASSAN & OWOLABI; the accused person was sentenced to 5 years by the high court for forgery and another 5 years for stealing, they appealed and the Supreme Court expressed his view, thus "fraud on the customs are shockingly prevalent and the forgery of commercial documents strikes at the roots of all credits, we are not disposed to reduce the sentence by one day." So also in STATE V MICHEAL AYEGBEMI; it was also because the court viewed in STATE V ANOTHER, that robbery on roads and water in recent times have been on increase and disturbing that the two parties to the robbery were sentenced to 20 years imprisonment. In ONYILOKWU V COMMISSIONER OF POLICE, the offender who was initially detained for causing harm and later he unsuccessfully tried to escape and was additionally tried for escaping from lawful custody and was later charged and acquitted; the

court expressed that 3 years' imprisonment on him did not show adequate consideration not only for his first offender status but also for an offence which was not a felony. Rampancy of the offence is one of the most necessary consideration as it can be mitigating factor or an aggravating one depending on the offence. Certain offences have been considered unserious in nature e.g.; sexual offences especially when it involves children as victims. In *STATE V ADEBOYE*; a 3 years' prison sentence as imposed on an offender for inserting a finger into the vagina of a little girl who was age 9 who was hawking groundnut. Also in *IKO V STATE*; a taxi driver was sentenced to 5 years' imprisonment with hard labor for raping a passenger so violently. Robbery with violence is also considered to be serious in nature. In *OLANIPEKUN V STATE*, during a robbery, the leader ordered one of his followers to shoot a victim, he complied but the gun did not go off, he was sentenced to 5 years with hard labor inter alia that society demands that such a man should be kept out of circulation from time to time. Similarly, in *R V OZULOKE*, where the appellant met a village girl on a village road, he covered her eyes with his hand and stuck bread into her mouth to stop her from crying out and took her into a bush and laid her on the ground, stood on her hand and poured acid on her body and cut off her left ear, forced her to open her eyes and poured acid into them and later ran away and left her unconscious. The 20 years jail sentence was considered adequate; the offence was regarded as being the most revolting. See also *ADEYEYE V STATE*, *R V OKEKE*, the gravity of the offence can also be linked with the rampancy of an offence. If considered rampant and grievous, the court will most likely impose a heavier punishment in the view to stamp out these types of crime in the society.

➤ **STATUTORY LIMITATION**

Statutory limitation is the law that prohibits persecutors from charging someone of a crime that was committed more than a specific number of years ago. The general purpose of this limitation is to make sure convictions occur only upon evidence that has not deteriorated with time.

After the period of the statute has run, the criminal is essentially free. Also, where the state itself has stipulated time of imprisonment, the court shall not exceed its statutory limit. Criminal status limitation is the law that if you defile a girl under the age of 13, you must bring it to court under the expiration of 2 years, Sexual offence relating to idiots within 3 months if the law provides a maximum sentence of 20 years that means the judge has jurisdiction to entertain the matter and can't go beyond it.

➤ CONCURRENTLY OF THE OFFENCE

There are laws governing these sentences. When a person accused is charged and found guilty for more than two offences in Nigeria. The general rule is whenever a court finds an accused person guilty for more than one offence the sentence should run concurrently. The supreme court held this position by saying whenever the offence is of similar nature or disposition they should run concurrently. In *NWAFOR V THE STATE* the accused person was found guilty and sentenced for store breaking and possession of breaking implement in the same transaction. The supreme court held that they should run concurrently because they are from the same transaction. The purpose of imprisonment is to reform the criminal make them better.

APPLICATION

What are the things that will guide you in sentencing Evans having regards to the guidelines laid down by the supreme court?

In applying the guidelines given by the supreme court, using **RAMPANCY OF AN OFFENCE**, Evans, a notorious kidnap kingpin and armed robber who has also been involved in series of assault, rape and defilement of young girls. The fact that Evans **committed series of these offences** will cause his sentence to be more than the sentence that will be given to a first time offender. **THE NATURE OF THE OFFENCE** and also considering the offences which is a mix of **Felonies and Misdemeanors** accordingly. Where an offence is rampant, courts have always thought that the severity of sentence imposed will aid in stamping out the crime. If considered rampant and grievous, as its considered to be the court will most likely impose a heavier punishment in the view to stamp out these types of crime in the society. Also as a notorious kingpin that means his **POSITION AMONG HIS CONFEDERATES** is the **leader meaning that he played a major role** so it means that he is the moving force of these offences so the offender who has played the major role in the commission of a crime is usually visited with more severe punishment than those inflicted. Also, **CONCURRENTLY OF THE OFFENCE**, the general rule is whenever a court finds an accused person guilty for more than one offence the sentence **should run concurrently**. From the **RECORD OF THE OFFENDER**, Evans is **not a one-time offender**, he committed series of offences so his sentence will be higher than the minimum sentence stipulated for an offence. Also, **THE CHARACTER OF THE OFFENDER**, when the character of the accused person in question becomes admissible in law. Evans was **arrested at**

the Seme border dressed like a woman and attempting to cross the border to Benin-Republic. for **STATUTORY AUTHORITY**, I will consider if the stipulated time for the offences have elapsed or not to arrive at a fair judgement.

CONCLUSION

In Conclusion, to arrive at a fair and just judgement as the presiding judge of this Evans case, I will follow the guidelines set by the Supreme Court; The nature of the offence, Character to the nature of the offender, Position of the offender among its confederates, the rampancy of the offence, Statutory limitation, Concurrency of the offence, to arrive at a fair judgement.