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17/law01/199

Criminology Assignment Answer:

According to the Canadian sentencing Commission, sentencing is defined as the judicial determination of legal sanctions to be imposed on the person found guilty of an offence. It is a definite order pronounced by courts of competent jurisdiction at the end of a criminal trial after the finding of guilt against the accused person. A sentence can be defined as a definite disposition order issues by a court or other competent tribunal against a person standing trial at the conclusion of a criminal trial. Sentencing generally aims at the protection of the society through prevention of crime or reform of the offender which may be achieved through various means.

Sentencing is a very broad field accommodating different approaches and ideas. In all criminal trial, where a conviction is secured, the next logical step would be sentencing. A criminal trial involves two processes both of which are important to the society and the offender. Firstly, there is the process of determining whether the accused did the act or made the omission alleged against him; if he did, then the second leg is that of sentencing for his wrongdoing.

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. The Supreme Court laid down six guidelines to aid the courts in reaching a reasonable just and fair sentence. This writer will therefore proceed to use these guidelines in sentencing Evans and they include:

- a. The nature of the offence
- b. The nature and character of the offender
- c. Position of the offender amongst his confederates
- d. The rampancy of the offence
- e. Statutory limitation
- f. Concurrency of the sentence

a. The nature of the offence

As a principle of law and practice, the nature of the offence committed by an accused person (defendant) of which he has been found guilty goes a long way in dictating or determining the extent of his punishment. The law states 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 its punishment clearly stated. There are some aggravating facts which could either lead to the enhancement of the punishment, in which case, the offender will be deprived of the possibility of having a lighter sentence. Certain offences have been considered as serious in nature, for example, sexual offences especially when it involves children as victims.

Looking at Mr. Evans's case, he has been found guilty of a series of sexual assaults some of which includes rape and defilement of young girls which is regarded as a serious offence in Nigeria and attracts harsher sentences. In *State v Adegboye*, a three year prison sentence was imposed on the offender for inserting his finger into the vagina of a nine year old girl who was hawking groundnuts and this was despite the first offender status of the offender. Similarly, in *Iko v State*, a taxi driver was sentenced to five years imprisonment for raping a passenger so violently as to cause bleeding.

Also, robbery with violence is also considered serious in nature. In *Adeyeye & ors v State*, a case of robbery with violence tried by the high court of the Western State, the court imposed an eighteen years imprisonment sentence on the accused. On appeal, the Western State Appeal Court reduced the sentence to ten years. The accused person unsatisfied with the decision of the Appeal Court yet appealed to the Supreme Court which reinstated the eighteen years with three strokes of cane. The Supreme Court stated that the sentence of the Appeal Court was too lenient because of the seriousness and nature of the offence.

The offence of forgery of court processes, and stealing of money entrusted in one's care has all been considered as serious in nature by the courts as well as cases of manslaughter known as unintended homicide either by provocation murder or automobile homicide. However, in the cases of automobile homicide, there is a tendency of the courts to impose slight penalties as opposed to provocation murder. Mr. Evans having been found guilty of obtaining property by false pretence will likely be liable to receive a harsher sentence

In *Mohammed v C.O.P*, the accused person who had never driven in his life jumped into a car and killed some pedestrians. He was sentenced by the High Court to three years imprisonment and ten years suspension from driving which was reduced by the Supreme Court to eighteen months imprisonment and five years suspension from driving. In contrast, there is a tendency to impose an average term of ten years for provocation murder. In *Adekanmi v State*, the accused killed his wife in a sudden flow of emotions when she told him that their children belonged to her lover and he was impotent. The Supreme Court upheld the defense of provocation murder and imposed a term of fifteen years imprisonment.

b. Character and nature of the offender

As a rule of law and as a principle of evidence, character evidence is inadmissible in law. However when the character of the accused person is in question, the evidence of his character becomes admissible in law. It has been said that there is a certain ambiguity about the expression "good character" in the sentencing context. Sometimes, it refers only to an absence of prior convictions and has a rather negative significance, and sometimes it refers to something more of a positive nature involving or including a history of previous good works and contribution to the community.

Looking at Mr. Evans's case, it can clearly be depicted that he was not one of good character, having been found guilty of these series of offences. Therefore, it is likely that his sentence will be a harsh one based on this fact. In *Adeyeye v State* (supra), part of the reasons advanced for the reinstatement of the eighteen years was that the accused person was convicted earlier of an offence. It would appear that the court works on the assumption that anyone with a previous conviction has lost out in terms of mitigating the sentence.

It should be noted that good character has however provided the opportunity to offend. An offender's prior good character may carry less weight where prior good character placed them in a position which enabled them to offend. In *Valsamakis v The Queen*, the offender was a customs officer who had committed drug importation offences. Hall J reaffirmed the sentencing judge's remark stating that prior good character was generally of less weight as a mitigating factor for a drug offence and his prior good character was necessary for his gaining employment as a customs officer.

c. Position of the offender amongst his confederates

This can be seen in two instances: when the offender plays a minor role and when he plays a major role.

- When the offender plays a minor role: it is a general rule that those who instigate should get higher punishments than those instigated. In the case of *Enahoro v The Queen*, a case of treasonable felony, Enahoro was sentenced to fifteen years imprisonment by the High Court. The Supreme Court reduced the sentence to five years and stated that a sentence imposed on a lieutenant should never be more than the leader. The leader of a gang should be punished more severely than the lieutenant. The leader is usually the epicenter of the activity, the moving force and the progenitor of the crime.
- When the offender plays a major role: the offender who has played a major role in the commission of a crime is usually visited with or severe punishments than those convicted of minor crimes. The above idea was given recognition by our courts in the case of *Queen v Muhammed & ors* while the first appellant who was the leader was given a maximum sentence of 8 years imprisonment, the other parties were given a maximum of five years imprisonment each.

Therefore from the aforementioned scenario, since there has been no evidence that Mr. Evans has been found to play a leading role or a minor role in the offences he has been found guilty of, such position will be subject to the investigation and scrutiny of the law enforcement and under the discretion of the judge.

d. Rampancy of the offence

Where an offence is rampant or prevalent, courts have always thought that severity of sentences imposed will aid in stamping out the crime. In *R v Hassan & Owolabi*, the accused person was sentenced to five years by the High Court for forgery and another five years for stealing. He appealed and the Supreme Court expresses their view thus: "frauds on the custom are shockingly prevalent and the forgery of commercial documents strikes at the root of all credit; we are not to reduce the sentence by one day.

Having stated this, we can deduce that Mr. Evans having been found guilty of series of events will attract a harsher sentence due to the fact that the offences were rampant and he was known as a notorious criminal. Also, in the case of *State v 2 Ors*, robbery on the roads and water in recent times had been on the increase and also disturbing that two of the parties to the robbery were sentenced to twenty years imprisonment.

It should be noted however that rampancy of the offence is one of the most necessary consideration as it can be a mitigating factor or an aggravating ne depending on the offence that has been committed. For example, if violent sexual attacks were prevalent in a neighborhood, each offence affects not only the immediate victim but also the women generally in that area. The sentence commensurate with the seriousness of the offence will therefore be higher than elsewhere.

e. Statutory limitation

A statute of limitation is a law which forbids prosecutors from charging someone with a crime that was committed more than a specified number of years ago. It is a law passed by a legislative body to set the maximum time after an event within which legal proceedings may be initiated.

The most important purpose of statute of limitation is to protect the accused from the burden of defending himself against charges of long-completed misconduct. This simply means that the statute of limitations helps to make sure that convictions occur only upon evidence that has not deteriorated with time. After the period the statute has run, the criminal is essentially free. Also, where the state itself has stipulated terms of imprisonment for a particular crime, the court shall not exceed it in giving sentences. There are two types of statutory limitation in Nigeria which we have to take note of: the statutory maximum and the magisterial jurisdiction limitation.

With regards to statutory maximum, In *Queen v Eyo & ors*, a case of unlawful assembly, the High Court sentenced the accused to five years imprisonment. On appeal to the Supreme Court, it decreased the sentence to three years because that was the maximum sentence stipulated by law. Also, with regards to magisterial jurisdiction limitation, in *Aremu v I.G.P*, the Magistrate Court sentenced the accused to two years imprisonment. Dissatisfied, the state appealed to the Supreme Court which stated that it could not impose punishment more than what the Magistrate Court had imposed because no Magistrate Court could impose more than the maximum punishment of five years.

This guideline however will not mitigate the harsh sentence to be imposed on Mr. Evans. This is because not all crimes are governed by the statute of limitation. Crimes such as murder, sexual assault of minors, kidnapping, arson, crimes of violence and forgery have no statutory limitations. Evans, having been found guilty of kidnapping, sexual assaults of minors as well as obtaining property by false pretence is liable to receive a harsh sentence and will not be statute barred.

f. Concurrency of the sentence

When a criminal defendant is convicted of two or more crimes, a judge sentences the defendant to a certain period of time for each crime. Sentences that may all be served at the same time, with the longest period controlling are concurrent sentences. Judges tend to sentence concurrently out of compassion, plea bargaining or the fact that the several crimes are interrelated. So if a defendant has been sentenced to five years in prison for burglary and also ten years in prison for aggravated assault, his total concurrent sentence would equal ten years in prison.

The opposite of a concurrent sentence is a consecutive sentence. As the name implies, a consecutive sentence requires a defendant to serve two or more sentences back to back. Therefore, in the above example, the defendant's total sentence, if served consecutively, would be fifteen years. A concurrent sentence will be more favorable for a defendant who has been convicted of multiple crimes, because the total length of the sentence will be shorter than it would be if the sentences ran consecutively.

Whatever the reason, it is a judge who ultimately decides if the defendant should serve his sentences concurrently or consecutively. The same factors that judges tend to consider when deciding on the severity of a sentence, for example, a defendant's past record also affect their decisions on whether to give concurrent or consecutive sentences. In *Nwafor v State*, where the accused person was found guilty of the offence of store breaking and breaking instruments in the same transaction, the Supreme Court held that the sentences should run concurrently as they were committed in the same transaction.

With regards to the aforementioned scenario, Mr. Evans, being a notorious criminal and having committed series of offences is likely to have his sentences served consecutively. This is because his past records shows him to be a dangerous criminal and it will be best to put him away for a long period of time for the benefit of the community at large. Nevertheless, this writer is of the opinion that his offences of extortion and obtaining property by false pretence could run concurrently because they are of the same field of offence.

In conclusion, being the sentencing judge and having regards to the guidelines laid down by the Supreme Court, this writer is of the opinion that Mr. Evans will be liable to receive a harsher sentence. This is because in relation to the nature of the offence, the offences Mr. Evans was found guilty of were grievous offences which naturally under the Nigerian law would attract a harsh sentence. In relation to the nature of the offender, Mr. Evans being a notorious criminal is one with a bad character and therefore the sentence will not be lenient.

Also, in relation to the rampancy of the offence, the offences committed by Mr. Evans are of a rampant nature therefore, it will not be expected to grant him a lenient sentence. Finally, in relation to both the statutory limitation and the concurrency of the offence, it can be deduced that the offences Mr. Evans was found guilty of were not statute barred and will attract a harsher sentence which are likely to be run consecutively due to his character of being a notorious criminal to keep him away for the benefit and safety of his community.