

## **AFE BABALOLA UNIVERSITY ADO-EKITI (ABUAD)**

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**COURSE CODE:** LPI 304

**COURSE TITLE:** CRIMINOLOGY II

**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 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 pretense. Having found him guilty of these charges, your next assignment is to sentence him accordingly. What are things that will guide you in sentencing Evans having regard to the guidelines laid down by the Supreme Court.*

### **ANSWERS**

The question above simply asks that, using the guidelines for sentencing which was laid down by the Supreme court, what will would determine my sentencing of the convicted felon. Therefore, the question is centered on the principles of determining a suitable sentence.

In the realm of Law, a sentence is the definite order the court of competent jurisdiction at the end of the criminal trial after the finding of guilt against the accused person. According to the decided case of **ICHI V. STATE**<sup>1</sup>, it is stated to entail the formal judgement pronounced by the court upon an accused individual after conviction in a criminal prosecution imposing punishment. The purposes of which include but not limited to; denouncing unlawful acts, prevent reoccurrence of the same unlawful act, to deter individuals from engaging in unlawful acts, to preserve peace and order in the society, to promote the acknowledgement of harm done to victims and the society, etc. It is a common principle that the sentence whether of imprisonment or payment of the fine is determined from the discretion of the judge presiding over the case after the conviction of the accused. The Supreme Court in **MOHAMMED V. OLAWUMI**<sup>2</sup> laid down some guidelines which are to assists courts in Nigeria to reach a suitable sentence for any offence. Sentencing guidelines are designed to show judges the expected sanction for particular types of offences, limit the sentencing discretion of judges and reduce

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<sup>1</sup> (1996) 9 NWLR pt 470

<sup>2</sup> (1993) 4 NWLR (Pt.288) 384

irregularity among sentences given for similar offences. This is to mean that the judge before giving a sentence should take into consideration; the nature of the offence, nature of the offender, position of the offender among his confederates, rampancy of the offence, statutory limitation and concurrency of the offence. These guidelines are now going to be explained seriatim.

1. Nature of the Offense: this is a very common guideline that a judge would consider as a man cannot be guilty of an act with at the time of commission was not a crime and the nature of an offense determines the extent of the punishment. Some offenses are classified as simple offenses (unlawful acts that are not viewed as very serious in the eyes of the law), some are misdemeanors ( unlawful acts that are punishable with imprisonment not less than 6 months and not more than 3 years) and some are felonies(which are unlawful acts with punishments ranging from death penalty to imprisonment for 3 years or more). Simple offenses are simply unlawful acts which are not classified under felony or misdemeanors. Therefore, the nature of the offense committed will go a long way in determining the suitable and proper punishment or sentence to be given to the convicted individual. This principle can be seen in law as homicide is classified into murder and manslaughter with manslaughter being said to not be as harsh as murder. For example, in the area of manslaughter, there is a tendency of the court to impose a harsher punishment in cases provocation over automobile homicides. As seen in the decided cases of **ADEKOMI V. STATE** and **CHUKWU OBAJI V. STATE**, the court decided to impose a sentence of 15 years imprisonment for homicide by provocation considering the nature of the offence. While in the **IDOYE V. STATE** where the trial court sentenced the accused for automobile homicide to 5 years imprisonment and 10 years suspension from driving but the supreme court however reduced the sentence by cutting the imprisonment and suspension time in half.
2. Nature of the Offender: in determining a suitable sentence for an offender the court is to consider the character of the offender. The court is to note whether the offender has been convicted before of a similar crime because the court works on the assumption that anyone with a previous conviction is to be given a harsher punishment. The court should note whether the offender has reached the age of 18 because an individual below 18 will not be sentenced the same way as an individual who has reached 18years and according to **Section 265 Administration of Criminal Justice Act**, it is the age of the offender at the time of his conviction that is material. The court should note whether the offender was insane at the time of committing the crime because the defense of insanity can mitigate sentences. This can be seen in the decided case of **R V. State** due to the fact that the accused had been convicted for

the same crime previously, the court decided to increase the sentence from 18 months to 5 years imprisonment. Also, in the case of **Adeyeye V. State** due to the fact that the convicted person having been convicted before for an offense, the court decided to reinstate a punishment of 18 years imprisonment. Therefore, the judge will be expected to consider whether the convicted individual has a good or bad character and bad character will obviously attract a harsher punishment. In **R V. Bangaza**, the two accused persons committed assault on the deceased in retaliation for the deceased's children assaulting the appellant's younger brother. They were convicted and in 1950 escaped and hid themselves for nine years. They surrendered themselves to the authorities in 1959 and the court held that they should be put to death. The Judge stated in the case that if the appellants had not run away at the time of their conviction then the provisions of **S. 265 C.C.** would have applied but as they ran away their appeal must be dismissed.

3. Position of the offender among his confederates: this is simply to say that in a crime involving more than one party, the individuals who had played a minor role should be given the same sentence as the leaders or those who played a major role in the commission of the crime. Therefore, the leader of a group that commits a crime is expected to be given a harsher sentence than those other members of the group. The Supreme court reduced Enahoro's sentence in **Enahoro V. Queen** from 15 years imprisonment to 5 years imprisonment based on the fact that a subordinate should not be imposed a sentence more than that of the leader who in the case was Awolowo. In the case of **Ihum & others V. Tiv Native Authority** where a group of individuals in a riot destroyed some properties, the leader got 20 years imprisonment while the rest got six years imprisonment. Also, in **Queen V. Mohammed & Others**, the leader was given a maximum sentence of 8 years imprisonment, the other appellants were given a maximum sentence of 5 years.
4. Rampancy of the offense: This is one of the most necessary consideration that judge should note. The gravity of an offence can be likened to rampancy of an offence. court in its attempt to deter individuals from continually venturing into a crime will impose a more severe punishment for such a crime. Therefore, rampancy of an offense would attract a heavier sentence on the offender. In the decided case of **R V. Hassan Owolabi**, the court held that the act of fraud and forgery are too great for the sentences to be reduced.
5. Statutory Limitation: this is a rule which prevents an individual from being prosecuted for a crime after a specific period of time have passed and where a specific period for imprisonment for an offense has been stipulated in law, the judge must impose the period stipulated not exceeding it. This is due to the fact the law is to make sure that conviction is based on evidence

and such evidence should have not deteriorated with time. The Supreme court in **Queen V. Eyo** reduced the sentence from 5 years to 3 years imprisonment as it was the maximum sentence stipulated by law.

6. Concurrent or Consecutive Sentences: whenever an accused is found guilty of more than one offence and such offenses are of a similar nature, the punishment or sentence should run concurrently. Separate offences charged together must each receive separate sentences but if those offences form parts of the same criminal action then the sentence will be concurrent. In **Nwaifo V. State** the sentence was held to run concurrently due to the fact that the offences committed were of similar nature.

Using these guidelines in determining a suitable sentence, I would impose on Evans, the convict, a sentence of death penalty. The reasons for my decision are as follows;

Under the nature of the offence: Evans is guilty of offenses that are classified as felonies in the eyes of the law. This dictates that they are very serious unlawful acts and so it is expected to attract a harsh punishment. Kidnapping is classified as a felony under **Section 364 Criminal Code** with attracts 10 years imprisonment. Armed Robbery under **Section 402 (2)(a) Criminal Code** is a felony that warrants death penalty. According to **Section 358 Criminal Code**, Rape is classified as felony that attracts life imprisonment. Defilement of girls below 13 years is a felony that attracts life imprisonment under **Section 218 Criminal Code**. As stated by law, the punishment for ritual killing is death sentence. Extortion by **Section 408 Criminal Code** is punishable with 14 years' imprisonment and obtaining property by false pretense under **Section 419** is 3 years. Therefore, as the offenses are felonies, a harsh penalty will be demanded.

In considering the nature of the offender, the convict, Evans, is a notorious kidnapper and armed robber which means that he has a bad character which would attract a harsh punishment as opposed to if he had a good character. The fact that he is a habitual offender and well-known for doing such an unlawful act makes me satisfied with my decision so as to ensure peace and order in society. Evans, although convicted alone is described as the 'kingpin' which means that he is the 'moving force' that perpetrates or instigates the crimes. As he is the progenitor of the crimes, he is to receive a greater punishment than that of his subordinates. The gravity or rampancy of the offences committed by Evans is another reason as a severe punishment will be suitable in deterring other individuals in the society from committing the same offences as Evans and which would decrease the rampancy of the offences. Armed robbery, according to **Olanikpeku V. State**, is of a serious nature. In considering statutory limitation, the law has provided specific sanctions for the offences committed and so the

court cannot mitigate the punishment in this case. The highest penalty specifically stipulated by law is death sentence and therefore the court is able to impose such on the convict. From the facts of the case presented before me, I am not aware of any statute that would limit the authority of the court to pronounce such judgment on Evans, the convict. The concurrency or consecutive nature of the sentence has shown that since all the offences committed are brought together in a criminal action then there should be the imposition of concurrent sentence.

In conclusion, I believe that by the use of the 6 guidelines imposed by the Supreme Court to assist courts in making suitable and good judgement, I have been able to make a suitable decision of Evans sentence. The guidelines have assisted me in noting that Evans, the Convict, who has been found guilty of kidnapping, armed robbery, rape, defilement, ritual killing, extortion and obtaining property by false pretense, by evidence that has not deteriorated over time, has committed very serious crime and not being of a good character should not be allowed a chance to go back into the society. He should be given a harsher sentence to make him acknowledge his own evil deeds and it would also deter other individuals in the society from committing the same crimes which will as a result reduce the rampancy of the offence.

## **REFERENCES**

- Criminal Code Act CAP38 Laws of the Federation 2004