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What is Sentencing?

Sentencing is the prescription of the punishment by a court to someone convicted of a crime. It is an occasion when someone who has been found guilty in a court of law is told what their punishment will be. In the case of *ICHI V STATE*, a sentence was said to be the judgement formally pronounced by the court or judge upon an accused person after his conviction in a criminal prosecution imposing the punishment to be inflicted.

The Supreme Court has however laid six (6) basic principles or guidelines to help the court to reach a reasonable, fair and just sentence. These guidelines would be listed, explained and applied to the question seriatim.

1. The Nature of the Offence.
2. The Character/Nature of the offender.
3. Position of the offender among his Confederate.
4. Rampancy of the Offence.
5. Statutory Limitations.
6. Concurrency of the sentence.

• **NATURE OF THE OFFENCE**

The nature of the offence committed by the accused person is very fundamental in the determination or deciding of the extent of his punishment. This means that the punishment inflicted on an offender who has been found guilty of an offence is dependent on how serious the offence is. In addition, the law is clear on the fact that a person cannot be found guilty of an offence which as at the time the offence was being committed it does not constitute a crime in any written law and its punishment is not clearly stated.

In the case of *ADESANYA V THE QUEEN*, a case of forgery of court processes, the court held that the seriousness of the offence, its nature and the gravity makes forgery of court processes a grievous offence. Hence, payment of fine was too small a punishment for the offence. Also in *ADEYEYE&ORS V STATE*, the accused was found guilty of robbery by violence and was sentenced to 18 years imprisonment by the High court, he then appealed to the Court of Appeal who reduced the sentence to 10 years, unsatisfied he appealed again to the Supreme Court and his initial 18 years imprisonment was reinstated with an addition of three (3) strokes of cane. The supreme court stated that the sentence of the Court of

Appeal was too lenient for the seriousness of the crime. We should also bear in mind that all the offences mentioned above are recognized in a written law with their punishments stated.

In relating the above to the hypothetical situation of Evans, all the offences, rape, kidnapping, armed robbery, ritual killing amongst others, he has been found guilty of are offences of serious nature and they are all recognized by the law with their specified punishment. For instance, according to **SECTION 358 CRIMINAL CODE**, the punishment for rape is *imprisonment for life*, while that of armed robbery is imprisonment for not less than **21 years (SECTION 402(1) CC)**. So, I, in this situation would use the punishments in the written law and the gravity of offence as one of the guidelines to arrive at his sentence.

- **THE CHARACTER/NATURE OF THE OFFENDER**

This is another point that is very vital to help the court reach a fair and just decision. The character i.e the type of behavior the accused person possesses may be examined in deciding or determining his punishment. Generally, as one of the rules of evidence, character evidence is not admissible (**Section 78 and 81 EVIDENCE ACT**). Nonetheless, when the character of the accused person is in question meaning that when the character of the accused person is of vital importance to the case, the evidence of his character becomes admissible. They may put into consideration if the accused person is a first time offender or a regular offender. For instance in the case of **ADEYEYE V THE STATE** previously cited, one of the reasons the supreme court reinstated the 18 years was because the accused person was convicted earlier for an offence. Also in **REGINA V R**, one of the reasons for the increase in his sentence from 18 months to 5 years was because he had been previously convicted for defilement. With this, we would see that the courts usually work on the assumption that anyone with a past conviction would not be favored if a sentence is to be mitigated

Hence, I would look into Evans behaviors critically and also examine if he has any past criminal records, it has been established that he is a notorious criminal who has been involved in a lot of offences including assault, rape defilement of young girls etc. so it is safe to conclude that Evans character is questionable and this will enable me to make a proper decision on his sentence which may most likely not be in his favor because he is a regular offender.

- **POSITION OF THE OFFENDER AMONG HIS CONFEDERATE**

The court is expected to examine if the offender played a major role in the commission of the offence or if he played a minor role. This means that they are to see if the accused person is the principal offender in the case or he was involved in aiding and abetting.

Playing a major role

An offender who played a major role in the commission of a crime for example, leading a gang, is expected to have a higher punishment than the remaining people involved in the act. For instance, a man who killed an individual during the course of a robbery would have

a higher punishment than a mad who was only guarding the gate in that same robbery. In the case of *QUEEN V MOHAMMED&ORS*, the leader was given a sentence of 8 years while the others were given 5 years imprisonment.

Playing a minor role

In the same way, an offender who played a minor role in the commission of a crime is meant to get a lesser punishment than the leader or a person who played a major role as stated in the case of *ENAHORO v THE QUEEN*.

As the Presiding Judge in the Evans case, I would examine if Evans played a major or minor role in the commission of the crimes he has been found guilty of so as to enable me to reach a fair and just sentence.

- **RAMPANCY OF THE OFFENCE**

This is an aspect that is of utmost importance especially because if not treated properly it may affect the society greatly in the sense that if a crime is prevalent in a society, having a minimal punishment for it would not help to eradicate such crime from that society. So the rampancy of an offence usually determines how grievous the punishment of that offence may be. Therefore, it is very likely that an offence that is rampant will have a higher punishment than one that is not rampant. Infact, it is very likely that a Judge would increase the year of sentence just because an offence is rampant with the belief that it will aid in stamping out the crime. In the case of *R V HASSAN AND OWOLABI*, the court on appeal held that the offence of fraud on customs and forgery of commercial documents which they have been found guilty of are shockingly prevalent hence, they won't reduce the sentence. Having established this, I, as the presiding judge will consider the fact that many of the offences such as rape, armed robbery, kidnapping, defilement etc. that Evans has been found guilty of are offences that are very prevalent in the society today therefore bearing it in mind that it is such offences that the community is trying to stamp out hence sentencing him very brutally.

- **STATUTORY LIMITATION**

A statute of limitation is a law that sets the maximum time the parties involved have to initiate legal proceedings from the date of an alleged offence, whether criminal or civil. The length of time allowed under a statute of limitation usually vary depending on the severity of the offense. In most cases involving severe crimes like murder typically have no maximum period. So after the period of statute has run, the criminal is essentially free. In addition, where the state itself has stipulated terms of imprisonment, the court shall not exceed the statutory limit. It is important to state that not all crimes are governed by the statute of limitation for example, murder, sexual offences with minors etc. In the case of *QUEEN V EYO&ORS*, a case of unlawful assembly, the High Court sentenced them to 5

years imprisonment, the Supreme Court on Appeal, reduced the sentence to 3 years because that is the maximum sentence stipulated by the law.

In this way, I will examine all the offences Evans has been found guilty of and see if they have any statutory limitations i.e I will see if any of the offences have any maximum sentences stipulated by the law or if the length of time allowed for bringing an action for any of the offences has expired. For instance, rape is not statute barred in Nigeria same goes for kidnapping and defilement etc. So, having established this, the actions brought against him are valid and we may proceed to sentencing bearing in mind the maximum sentences stipulated for these crimes by the law.

- **CONCURRENCY OF THE OFFENCE**

- CONCURRENT AND CONSECUTIVE SENTENCES

Concurrent sentences are sentences that can be served at the same time, with the longest period controlling. Judges may sentence concurrently out of compassion, plea bargaining or the fact that the several crimes committed are interrelated. However, the general rule is that when the conviction is for multiple, separate offences, the term of imprisonment will run concurrently. The Supreme Courts affirms this by saying “whenever the offences are of similar nature, they should run concurrently. All this means that if an accused person is found guilty of two or more offences, for instance, house breaking, attempted murder and kidnapping instead of serving a jail term of each offence one after the other, the offender would just serve all the sentences at the same time. Simply put, concurrent sentence is when the sentences are allowed to overlap In the case of *NWAFOR V THE STATE*, the offender was found guilty of store breaking and destroying implements in the same transaction, the Supreme Court held that the sentences shall run concurrently because they are in the same transaction.

Consecutive sentences, are sentences that the accused person has to finish serving the sentence of the first offence before they start serving the sentence of another offence, unlike concurrent sentences that all the sentences are brought together to be served as one. So in this situation if an offender is guilty of more than one offence, he will serve the sentence of each offence one after the other.

Having established the difference between the two types of sentences, examining the facts of Evans case, we would notice that his offences are interrelated. For instance, defilement is related to rape the two can also be said to be related to kidnapping which is also related to extortion and also ritual killing. So almost all if not all the offences are related, so he will most likely run a concurrent sentence because he has been found guilty of more than one offence and they are related.

In conclusion, sentencing an accused person who has been convicted for a criminal offence is a matter in which a court should exercise great care because the essence of administration of criminal justice is to the end that a criminal is both punished and reformed. Thus, the guidelines at arriving at a just and reasonable sentence provided by the supreme court, have been explained above and have also been linked with the case of Evans. I, as the presiding judge on this matter would examine the nature of the offences Evans have been found

guilty of, then the character of Evans himself and his past criminal records, also I will spot the role Evans played in the commission of these offences, furthermore, I will examine how widespread the offences Evans have committed are and how they affect the society, I will then observe if the offences Evans committed have any statute limitation and finally I will put into consideration the fact that Evans has been found guilty of more than one offence hence, he will serve a concurrent sentence. With all these guidelines I believe I will be able to give a sentence which is adequate or appropriate enough to punish the offender in this scenario.