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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.

First of what is sentencing?

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. The criminal justice process is an embodiment of diverse institutions, from those charged with the duty of detection and investigation of crime and apprehension, prosecution and adjudication ending with the conviction of offenders in accordance with the due process, regulations and the law. The enabling powers of the institutions define their operational framework as well as their functions towards the effective administration of criminal justice. These institutions act as watchdogs for the society with the teeth to bite whenever the laws are violated. Much as offenders are punished to serve as deterrents for members of the society, the presumption of innocence lies in favour of a suspect unless and until he is proven guilty by a Court of law. 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. The ultimate goal of criminal administration is to accomplish fairness in the effective and expeditious determination of guilt or innocence.

Sentencing Guidelines

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.

The sentencing guidelines are divided into parts, each contains the factors and principles that applicable at the post conviction stage of proceedings. Every part is tailored to the respective offence noted above. The sentencing guidelines encompasses to the rules of practice and procedure in relation to sentencing after an offender has been convicted for any of the offences; to wit, to corruption, homicide, offences against the person, property, homicide related offences, public order, offence against the state and morality. The sentencing guideline, is a comprehensive template that will guide the Court in arriving at the sentence to be imposed. Considerations such as the aggravating factors which ought to be considered in sentencing, previous convictions, multiplicity of offences committed, steps taken to prevent victims or witnesses from supporting the investigation or testifying, concealment, disposal or destruction of evidence, frustrating or delaying prosecution e.t.c. whilst the mitigating factors, such as the absence of any previous conviction, remorse of the offender, evidence of restitution, evidence of good character, certified depilating medical condition or assistance given by the offender during prosecution are all factored as parameters towards assisting the judge in the imposition of sentence.

Other consideration in the sentencing process prescribed by the guideline is the stage at which a plea of guilty was made by the convict. It is also worthy of note that the sentencing guideline incorporates the “totality principle” amongst the factors applied in sentencing. This principle envisages a situation where the convict is being sentenced for more than one offence or where he is serving a sentence, the Court shall consider whether the total sentence is just and appropriate to the offending behavior, the principle is also applicable to cases where the offender is convicted for multiple offences, the judge, can, in sentencing order that the conviction should run concurrently or consecutively, Section 17 of the Interpretation Act shall also be considered by the Judge in determining whether the term of imprisonment imposed shall be with or without hard labour. The elaborate sentencing guidelines are recommended for every judge in the determination of the pronouncement he is to make by way of confiscation, forfeiture, compensation, restitution or other ancillary orders in accordance with the provisions of the applicable laws under which the offender is to be convicted.

The sentencing guideline is a veritable tool for assisting the Court in the sentencing process, it is hoped that all the States Judiciaries in the Federation will avail themselves of sentencing guideline. Hopefully it should curtail disparity in sentencing. In the case of Evans the following category will be considered:

OFFENCES AGAINST THE PERSON

12. Discretionary and non-discretionary punishments

(1) The Judge shall determine whether the statute allows for exercise of sentencing discretion on the offence under consideration.

(2) Where the statute does not permit the exercise of any sentencing discretion, the Judge shall apply the punishment prescribed by the statute and proceed to paragraphs 18, 19 and 20 of this Practice Direction.

(3) Where the statute permits the exercise of sentencing discretion, the Judge shall proceed to apply the provisions of paragraphs 13-20 of this Practice Direction.

13. Category of offence

(1) In sentencing a convict, the Judge shall determine the categories of the offence in accordance with the level of culpability of the convict and the severity of harm caused by the offence, after considering the qualifying factors set out in sub-paragraphs (2) and (3) of this paragraph.

(2) The level of culpability of a convict shall be determined in the following categories—

(a) it shall be deemed high culpability if there was –

(i) sustained or repeated assault on the same victim by the same convict or a group or gang of persons;

(ii) a significant degree of premeditation;

(iii) use of weapon or weapon equivalents such as iron rod, an animal, head butting, acid or any harmful substance;

(iv) deliberate causing of more harm than is necessary for the commission of offence;

(v) deliberate targeting of vulnerable victim or victims;

(vi) leading role in group or gang;

(vii) abduction or detention;

(viii) threats to prevent victim from reporting the incident; or

(ix) evidence to show that the offence was committed in the presence of a child.

(b) it shall be deemed low culpability if the following circumstances are found-

- (i) lack of premeditation;
- (ii) subordinate role in group or gang;
- (iii) a greater degree of provocation than normally expected; or
- (iv) mental disorder or learning disability linked to the commission of offence.

(3) The severity of harm caused by a convict shall be determined in the following categories—

(a) serious harm shall be deemed to have been caused if any of the following circumstances is present-

- (i) on- going effect on victim;
- (ii) offence committed against those working in the public sector or providing a service to the public;
- (iii) established evidence of community impact;
- (iv) where it results in death;
- (v) where it results in pregnancy (in sexual offences);
- (vi) where it results in break- up of marriage in case of a married couple;
- (vii) sustained or repeated assault on the same victim by the same offender or a group or gang of offenders;
- (viii) deliberate targeting of vulnerable victim; or
- (ix) offender is aware that he or she is suffering from a sexually transmitted disease;

(b) significant harm shall be deemed to have been caused where one or more of the following is present -

- (i) serious medical condition requiring urgent, intensive or long term treatment;
- (ii) significant psychological trauma;
- (iii) social Stigma on victim; or
- (iv) significant impact on persons giving service to the public; and

(c) limited harm shall be deemed to have been caused where harm is demonstrated by limited impact on victim.

14 Starting point and category range

(1) After determining the categories of culpability of the convict and severity of harm caused, the Judge shall apply the corresponding starting points of sentencing within the category range specified in the Second Schedule to this Practice Direction.

(2) Where the offence prescribes a minimum sentence the Judge shall not impose less than that minimum sentence irrespective of the starting point stated in sub – paragraphs (3) and (4) of this paragraph.

(3) The starting point shall apply to all convicts, notwithstanding the plea of guilt or previous convictions.

(4) Where the level of culpability of a convict is qualified by multiple features of culpability specified in paragraph 13(2) of this Practice Direction, an upward adjustment from the starting point may be made, before further adjustments for aggravating or mitigating features, set out in paragraph 15 of this Practice Direction.

15. Aggravating and mitigating factors

(1) Based on the evidence before the court, the Judge may consider aggravating or mitigating factors including those listed under sub-paragraph (2) of this paragraph and decide whether any combination of these, or other relevant factors, shall result in an upward or downward adjustment from the starting point set out in the Second Schedule to this Practice Direction.

(2) Aggravating factors shall include –

(a) location of the offence;

(b) timing of the offence;

(c) ongoing effect upon the victim;

(d) offence committed against those working in the public sector or providing a service to the public;

(e) presence of others including relatives, especially children or partner of the victim;

(f) offence based on factors of discrimination such as religion, political inclination, tribe, or sex;

(g) offence motivated by or demonstrating hostility to the victim based on the victim's

- disability (or presumed disability);
- (h) gratuitous degradation of victim;
- (i) in domestic violence cases, victim forced to leave their home;
- (j) failure to comply with current court orders;
- (k) an attempt to conceal or dispose of evidence;
- (l) failure to respond to warnings, Police cautions and binding over proceedings or concerns expressed by others about the convict's behaviour;
- (m) commission of offence whilst under the influence of alcohol or drugs;
- (n) exploiting contact arrangements with a child to commit an offence;
- (o) previous violence or threats to the same victim;
- (p) established evidence of community impact;
- (q) any steps taken to prevent the victim reporting an incident, obtaining assistance or from assisting or supporting the prosecution;
- (r) previous convictions taken into consideration; or
- (s) abuse of power, position of authority or trust.

(3) Mitigating factors shall include –

- (a) where there is no evidence of previous convictions or relevant recent convictions.
- (b) where the convict has shown remarkable remorsefulness;
- (c) evidence of good character or exemplary conduct or behaviour;
- (d) determination or demonstration of steps taken to address addiction or offending behaviour;
- (e) isolated incident;
- (f) age or lack of maturity where it affects the responsibility of the convict;

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- (g) lapse of time since the offence was committed where this is not the fault of the convict.
- (h) mental disorder or learning disability; or
- (i) Where the convict is found to be the sole or breadwinner for dependent relatives.

16. Guilty plea

(1) The Judge may consider any guilty plea made by the convict including when such plea was made, in determining a reduction in the sentence to be imposed.

(2) consideration for the reduction of a sentence upon a guilty plea shall not exceed a reduction by one-third of the applicable punishment prescribed by law.

17. Totality principle

(1) In sentencing a convict for more than one offence or where the convict is already serving a sentence, the Judge shall consider whether the total sentence is just and proportionate to the offending behaviour.

(2) In the case of a conviction for multiple offences, the Judge shall consider and make a pronouncement on whether the sentences shall run concurrently or consecutively.

(3) The judge shall in accordance with section 17 of the Interpretation Act exercise its discretion as whether any term of imprisonment imposed shall be with or without hard labour.

18. Compensation, restitution and ancillary orders pursuant to the provisions of sections 319,320, 321,323, 324 and 325 (Part 32-34) of the Administration of Criminal Justice Act

(1) In all cases, the Judge shall consider whether to make compensation, restitution, rehabilitation and treatment of victim or other ancillary orders in accordance with the provisions of applicable laws.

(2) Where the offence has resulted in loss or damage, the Judge may make a restoration order in accordance with section 336 of the Administration of the Criminal Justice Act.

19. Time spent in remand

The period spent in prison custody awaiting or undergoing trial shall be considered and computed in sentencing the convict in line with the provisions of section 416(2)(e) of the Administration of Criminal Justice Act.

20. Reasons for decision

The Judge shall give reasons for the sentence imposed.

Generally there are 6 guidelines in sentencing which 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 in the case of ***Adeyeye and others vs 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 vs 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 CONFEDERATES

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 vs 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 vs 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.