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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 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, 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 pretence. 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 regard to the guidelines laid down by the Supreme Court.

ABSTRACT

The above question borders on the laws governing sentencing practices. The enforcement agencies of the Nigerian Legal System has the right to arrest, arraign, try, sentence and punish the offender accordingly. In the above question, the accused has been found guilty of all the charges levelled against him, but it is left for the Presiding Judge to sentence him. The Supreme Court has laid down six guidelines to aid the court in reaching a reasonable sentence. This term paper will highlight those guidelines and sentence Evans accordingly.

INTRODUCTION

Criminal Justice System in Nigeria commences with the commission of a crime and continues with subsequent intervention by the law and enforcement agencies of the system that has the power to arrest, arraign, try, sentence and punish the offender who committed the crime or who is alleged to have committed the crime, and the process of determining whether the accused committed the offence that is being alleged. In a criminal trial, conviction and sentence come at the end of the trial process.

THE CANADIAN SENTENCING COMMISSION (1987) defines sentencing as “a judicial determination of legal sanctions to be imposed on the person found guilty of an offence”. In the case of **ICHI v STATE (1996) 9 NWLR PT 470 83@89**, sentencing is defined as a judgement formally pronounced at a court by the judge on an accused person after his conviction in a criminal prosecution imposing the punishment to be inflicted. Some of the objectives of sentencing are to; denounce unlawful conduct and to separate offenders from society where necessary. The sentence emanates from the discretion of the judge after the finding of guilt.

In Nigeria, those who have been previously convicted in criminal cases usually attract harsher punishments and in the above case, Evans has been convicted before for various other criminal cases. The Supreme Court has laid down six sentencing rules and this should be followed in convicting Evans.

HOW DOES THE COURT ARRIVE AT A REASONABLE SENTENCE?

SECTION 248 OF THE CRIMINAL PROCEDURE ACT provides that “if the court finds the accused person guilty, the court shall pass sentence to the accused person or make another to reserve judgment and adjourn the case to some further date. The various types of sentence a particular crime may attract are seen in the Criminal Code, Criminal Procedure Act, Criminal Law of Lagos State and the Penal Code. We have seen from above that sentencing is very important in contributing to the maintenance of a just, fair and safe society. The question above is ‘what are the things that will help me as the Presiding Judge in passing a sentence on Evans’ and the Supreme Court has helped in providing the answer.

1. Nature of the offence.
2. Character/ Nature of the offender.
3. The position of the offender amongst his confederate.
4. The rampancy of the offence.

5. Statutory limitation.
6. Concurrency of the offence.

NATURE OF THE OFFENCE:

This is one of the hallmarks that aids the court in reaching a just sentence. The nature of the offence highly affects the extent of punishment to be imposed on the accused. In the case of **AOKO v FAGBEMI**, the court held that any offence that was not codified in any written law as a crime at the time it was being committed does not constitute a crime. The nature of the offender entails the seriousness and gravity of the offence. It also deals somehow with how often that offence is committed in a particular area. If an offence is too serious, then obviously the punishment would be a very harsh one compared to less serious offence. Offences like rape, armed robbery, treason and even murder are very serious one and the sentences are usually very grievous. To an extent, gravity of offences vary based on the geographical era except for some general serious offences like the ones listed above. Example, adultery is an offence in the North but not an offence in the South. It is there a crime in just the Northern part of Nigeria. The point is an offensive act is not a crime everywhere. In the case of **ADESOYA v THE QUEEN 1964 1ALL NLR 38**, the case of forgery, the principle was established that only in exceptional cases can a fine be sufficient for appropriate punishment for forgery of court process. The seriousness of the offence, its nature, the gravity, makes forgery of court process grievous.

In cases of manslaughter either by provocation, murder or automobile, in the case of automobile homicide, there is a tendency of the court to impose slight punishment as opposed to provocation murder. In the case of **IDOYE v THE STATE**, the accused drove his car at night without head lamps in a heat up area and killed a pedestrian in the process. He was sentenced to 5 years imprisonment but the Supreme Court reduced the sentence to two and half years. In contrast, in provocation manslaughter, there is a tendency to impose an average time of 10 years. Provocation is a mitigating factor and one of the factors the court looks into under nature of the offence. The defendant can prove provocation in murder cases and the punishment would be reduced to that of manslaughter. The maximum sentence for manslaughter is life imprisonment. In the case of murder, the punishment would be harsher as opposed to that of manslaughter. This is one example that explains nature of the offence. In the case of **ADEKANMI v THE STATE**, the accused killed his wife in a sudden flow of emotions. He pleaded provocation which was upheld by the Supreme Court. The S.C imposed a term of 10 years imprisonment. The seriousness of the offences committed by Evans alone will leave no room for plea of allucoters. Sexual offences and violent crimes has great gravity and the offenders are punished severely.

CHARCTER/NATURE OF THE OFFENDER:

Character has been interpreted broadly by the court and goes to good character. In the case of **RYAN v THE QUEEN, McHugh J** stated that: what makes a person of otherwise “good character” will necessarily vary according to the individual who stands for sentence. It is impossible to state a universal rule. In considering a prisoner’s good character, the court must distinct two stages. First, it must determine whether the prisoner is of otherwise good

character. In making this assessment, the judge must not consider the offences for which the prisoner is being sentenced. Secondly, if a prisoner is of otherwise good character, the judge must take that fact into account. However, the weight that must be given to the prisoner's otherwise good character will vary according to the circumstances of the case. The character of the offender and his record history goes a long way in determining the extent of sentencing to be imposed on him or her. This simply has to deal with the character of the accused and how bad his criminal record is. The criminal record of a first-time offender would not really be dented. One convicted of a crime before (just like Evans in this case) would have a really bad character. One with a very bad character can hardly plea and his sentence cannot really be mitigated. Plea of allucotors is a plea given by the defence council to mitigate the punishment of the accused. Character evidence is inadmissible in law. However, when the character of the accused person is in question, the nature becomes admissible in law. In **ADELEYE v STATE**, the appellant bad character was significant in the restoration of a heavier punishment on them. First time offenders attract lesser punishment compared to recidivists. In the case of **R v STATE**, the fact that the appellant had been convicted for defilement before, this led the court to increase the sentence from 18 months to 5 years imprisonment with hard labour. Offender characteristics may be based on sex, race, religion, socio-economic status, psychological or any number of measurable statistical data. In relation to age, under **SEC 368(3) of the CRIMINAL PROCEDURE ACT**, it is the age of the offender at the time of conviction that is material. In relation to the above question, Evans is one of a very notorious character and character is inadmissible in law. This contributes to one of the reasons why he should be faced with nothing less than capital punishment or an appropriate jail sentence.

THE POSITION OF THE OFFENDER AMONGST HIS CONFEDERATE:

The above term 'the position of the offender' simply describes whether the offender played a major role or a minor role in the crime. It also discovers if the offender is a first party offender, second party or an accessory to the fact. When an offender plays a major role, his punishment is likely to be harsher, compared to an offender who plays a minor role in a crime. If the offender is also the leader or projenitor of the offence, he suffers harsher punishments. An accessory to the fact is the offender who is procured or counselled to aid in the commission of a crime. He is not the projenitor of the crime. The leader is the moving force and epicenter of the crime. His subordinates or assistants should not get a punishment higher than that of the leader. This was stated in the case of **ENAHORO v THE QUEEN**. In the **STATE v KERENKU**, although the appellant was found not to be the leader. The court was however of the view that she played the leading part in the incident and must take that into consideration. Inferred from the circumstances of the case, we can say that Evans committed the offence alone without confederates and his punishment would be severe.

RAMPANCY OF THE OFFENCE:

Where an offence is very rampant and regular in a particular location, offenders of such crime will be punished severely. The court has always taught that severity of sentences imposed would aid in stamping out the crime. When the offenders of a prevalent crime are found

guilty, punishing them severely would help to deter them from repeating the crime and deter other people from committing the crime at all. In **STATE v MICHAEL AYEGBENI**, it was because of the court view in **STATE v ANOTHER** that robbery on roads and water in recent times has been on increase and disturbing that two parties to the robbery were sentenced to 20 years imprisonment. The rampant nature of an offence contribute in determining the extent of punishment to be imposed on the criminal. Rampancy of the offence is one of the most essential consideration as it can be a mitigating factor as it can be a mitigating factor or an aggravating one depending on the offence. Some offences has been considered rampant and serious. They include; rape, robbery, kidnap etc. In the case of **IKO v THE STATE**, a taxi driver was sentenced to 5 years with hard labour for raping a passenger violently. The gravity of an offence can also be liking to the rampancy of the offence. If considered rampant and greivous, the court will give a harsh punishment in the view to curb that crime. The offences committed by Evans are very rampant in Nigeria and should be curbed immediately. This is why offenders of those crimes should be punished severely as it is believed that this will help in stamping out those crimes from those areas. Evans should therefore be given harsh punishment owing to the number of crimes he committed, the gravity of those crimes and its rampancy.

STATUTORY LIMITATION:

This is a law that forbids the prosecutor from bringing up an action after a specified number of years. It aims at making sure that actions are brought upon strong evidence that has not deteriorated with time. There are two types: statutory maximum and magisterial jurisdiction limitation. In essence, whenever a statute itself has stipulated a time of imprisonment, no court should exceed its statutory limit. In the case of **MORDI v COP**, the magistrate court sentenced the accused to two years and the High Court later increased it to ten years. On appeal, the Supreme Court reinstated the earlier imposition of two years because that was the limitation in the Magistrate Court. There are however some exceptions to statutory limitation like the case of murder and sexual offences in some states. In relation to the above case, the offences were reported early and has obviously not become statute-barred.

CONCURRENT AND CONSECUTIVE SENTENCES:

There are laws governing concurrent and consecutive sentences. When a person is charged and found guilty of more than one offence in Nigeria, the general rule is that the sentence should run concurrently. In the case of **NWAIFO v STATE**, the Supreme Court held that the sentence should run concurrently because they arise from the same crime disposition. In the above case of Evans, robbery and kidnap arise from the same crime disposition while rape, assault and defilement arise from the same crime disposition. This simply means that his sentence would run concurrently. They can however still run consecutively.

CONCLUSION

In relation to the sentencing guidelines already laid down by the Supreme Court, we can conclusively say that there is no room for mitigation or even plea of allucotors by the defence council. Evans has been found guilty of all charges and the hallmarks outlined above are to contribute to the determination of his punishment.

The offences he has committed are greivous ones and they all constituted crimes at the time of commission (**AUKO v FAGBEMI**). The seriousness of the offences and its gravity will give no room for slight punishments such as payment of fine, canning, community service etc. he will rather be subjected to worse punishments like life imprisonment or even capital punishments. Furthermore, he has no right to prove provocation as it was never recorded that any of the offences occurred as a result of flow of emotions. Evans is a notorious criminal with a very bad character. He is also not a first time offender and in Nigeria, recidivists are subjected to harsher punishments and can hardly plea. When the accused has been convicted of an offence before, it would appear that the court will work on the assumption that anyone with a previous conviction has lost out in terms of mitigating the sentence. We can also say that Evans either played a major role or was the projenitor of most of the offences he committed. This would also account for one of the reasons why he should not be faced with any light punishment. Rampancy of the offence is another principle laid down by the Supreme Court and almost all offences committed by Evans are rampant in Nigeria. The court views harsh sentences as one of the measures to stamp out rampant crimes in a particular area. Owing to this fact, Evans should be faced with nothing less than capital punishment or an appropriate jail term. Statutory limitation is another hallmark that affects prescription of punishment by the court. If an offence is not brought within the number of years it should have been brought, it becomes statute-barred and cannot be taken to court any longer. However, in Evans case, he was apprehended early and his case was taken to court at the right time. Lastly, it should be noted that whenever a court finds an accused person guilty of more than one offence, the sentences should run concurrently especially if they arise from the same crime disposition. The Supreme Court held this position. This is why the affirmed sentences to be imposed on Evans would run concurrently especially since kidnap and robbery are of the same crime disposition while assault, rape and defilement are of the same crime disposition.

REFERENCES

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