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INTRODUCTION

The criminal justice system in Nigeria commences with the commission of the crime and continues with subsequent intervention by the law and enforcement agencies of the system that has the power to arrest, convict, sentence, and punish the offenders accordingly.

Sentencing could be defined as a definite order pronounced by court of competent jurisdiction at the end of the criminal trial after the finding of the guilt. Another definition of sentencing was given in the case of *Ichi v state*¹, where it was held that **‘A sentence is the judgement formerly pronounced by the court or the judge upon an accused person after his conviction in a criminal sentence, imposing the punishment to be inflicted. In other words, it is the judgement formerly declaring to the accuse person the legal consequences of the guilt of which he has been convicted of’**. Sentencing has also been defined by the Canadian Sentencing Commission in 1987 as the **‘judicial determination of legal sanctions to be imposed on a person found guilty of an offence’**.

The fundamental purpose of sentencing is to contribute along with the crime prevention on initiatives, the respect of the rule of law and of a just, peaceful and safe sanctions that have as its objectives to denounce unlawful conduct, to deter the offender and other persons from committing offences, to separate offenders from society where necessary, to assist in the rehabilitation of offenders and to promote a sense of responsibility in offenders and acknowledgement of the harm done to the community.

The Supreme Court has laid down 6 guidelines to aid the court in reaching a reasonable, just and fair sentence. They include;

- The nature of the offence
- Character/ nature of the offender
- The position of the offender among his confederates
- The rampancy of the offence
- Statute of limitation
- Concurrency of the sentences

The above listed will now be discussed in seriatim.

THE 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 the extent of his punishment. This means that the seriousness of the offence committed by the offender will be looked at. In *Adeye and ors v State*, a case of armed robbery by violence, tried by the High Court of a western state, the court imposed a sentence of 18 years imprisonment on the accused person. On appeal, the Western State Court of Appeal reduced the sentence to 10 years, the accused person, unsatisfied with the decision of the appeal court yet appealed to the

¹(1996) 9 NWLR pt 470 (83-89)

Supreme Court. The Supreme Court reinstated the 18 years punishment with 3 strokes of the cane on the reason of the seriousness of the offence.

Taking a brief examination of automobile homicides, there is the tendency of the Court to impose slight penalty as opposed to provocation murder. In *Idoye v State*, the accused person drove his car at night without head lamps in a hilltop area. In the process, he killed a pedestrian, he was sentenced to a 5 years' imprisonment from the high court in addition to 10 years from driving. The Supreme Court reduced the sentence to a 2 and a half year imprisonment and 5 years disqualification from driving.

In contrast, in cases of manslaughter, which is provocation murder, there is a tendency of the Court to impose an average term of 10 years. In *Adekonmi v State*, the accused person killed his wife in a sudden overflow of emotions when she told him that their children belonged to her lover and that he is impotent. The Supreme Court upheld his defence of provocation and imposed the term of 15 years imprisonment.

THE CHARACTER/ NATURE OF THE OFFENDER

This sometimes helps to reduce or influence the punishment of the offender. As a rule of law and principle of evidence, character evidence is inadmissible in law. However, when the character of the person is in question, the evidence of his character becomes admissible in law. In *Adeye v State* supra, part of the reasons advanced for the reinstatement of the 18 years was that the accused person had been convicted earlier of an offence. It would appear that the court work on assumption that any person with a previous conviction has lost out on the terms of mitigating the sentence. In *R v Regina*, the appellant had been previously convicted for defilement. This led the Court to increase the sentence from 18 months to 5 years imprisonment with hard labour.

POSITION OF THE OFFENDER AMONG HIS CONFEDERATES

The Court takes a close consideration towards the offender's position among his confederates. The two positions that could be held will now be examined.

When the offender plays a minor role

In the case of *Enahoro v The Queen*, a case of treasonable felony, Enahoro was sentenced to 15 years imprisonment by the high court. The Supreme Court reduced the sentence to 5 years and stated thus ***'The 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. This is to affirm that those who instigate should get a higher punishment than those who must be instigated'***. In this case, the leader got a 10 year sentence so the lieutenant should not get any sentence so the lieutenant should not get a sentence above 10 years. The leader in this instance is usually a person who represents the epicentre of the activity, the moving force and the progenitor of the crime.

When the offender plays major role.

The offender who has played a major role on the commission of the crime is usually given more severe punishment than those inflicted on the minor participants.

The above stated was given judicial recognition in *Queen v Mohammed and ors*, where, while the first appellant who was the leader was given a maximum sentence of 8 years of

imprisonment, the other parties were given a maximum of five years imprisonment. Also, in *State v Kerenku*, where although the appellant was found not to be the leader, the court was of the view that she played a leading part in the incident and must take that into consideration.

RAMPANCY OF THE OFFENCE

When an offence is rampant or prevalent, the Court has always thought that severity of sentences imposed in the aid of stamping out the crime. In *R v Hassan and Owolabi*, the accused person was sentenced to 5 years by the High Court for forgery and another 5 years for stealing. He appealed and the Supreme Court expressed its view thus 'Fraud on the customs are shockingly prevalent and the forgery of commercial document strikes at the root of all credit. We're not disposed to reduce this sentence by one day'. Also in *State v Michael Ayegbemi*, it was also held that robbery on roads and water in recent times had been on increase disturbingly. The two parties to the robbery were sentenced to two years imprisonment.

Rampancy of the offence is one of the most necessary consideration, when deciding on mitigating factors, depending on the offence. Considering certain offences considered serious in nature for example sexual offences, especially when it involves children as its victims, the court would want to impose heavy punishment in order to stamp such crimes out. In *R v Ozoloke*, where the appellant met a little girl aged 8 years on a village road, he covered her eyes with his hand and stuffed bread into her mouth to stop her from crying out as he took her into the bush, laid her on the ground, stood and poured acid on her body and cut of her left ear. He further poured the acid in her eyes, before running away and leaving her unconsciousness. A 20 year jail sentence was considered adequate. The offence was considered as being most revolting.

Robbery with violence is also considered serious in nature. In *Olanikpekun v State*, during a robbery, D the leader ordered one of his followers to shoot a victim, he complied but the gun did not go off. In sentencing him for 5 years imprisonment with hard labour, the court said *inter alia* 'The society demands that such a man should be kept out of circulation from time to time'.

STATUTE OF LIMITATION (STATUTORY LIMITATION)

A criminal statute of limitation is a law that prohibits someone from the possibility of bringing that case back to court. The general purpose of this is to make sure convictions only occur upon evidence that has not deteriorated with time. However, not all crimes are governed by statute of limitation for example Murder, some states include sexual offences with minors, crimes of violence etc.

Many states have adopted systems that classify offences by categories such as Simple offences, Misdemeanours and felonies. The court sentences according to this classification which the statute has provided the required punishment for. Furthermore, in Nigeria, there are two types of statutory limitation;

- Statutory maximum

- Magisterial jurisdiction limitation.

In essence, whenever a statute itself has stipulated a term of imprisonment no court should exceed its limits. In *Queen v Eyo and others*, a case of unlawful assembly, the High Court sentenced them to 5 years imprisonment. On appeal, the Supreme Court decreased the sentence to years because that was the maximum sentence stipulated by law.

CONCURRENT AND CONSECUTIVE SENTENCES

There are laws governing concurrent and consecutive sentences. When a person is charged and found guilty of more than 2 offences in Nigeria, the general rule is that ‘whenever an accused person is found guilty of more than one offence’, the sentence should run concurrently (i.e. simultaneously). When a sentence is to run consecutively, it means the sentence is to run one at a time. In *Nwafor v State*, have the accused person was found guilty of stock breaking and possession of breaking implement in the same transaction, the supreme court held that the sentence would be served concurrently as they were committed in the same transaction.

APPLICATION

In applying the aforementioned laid rules to the scenario, sentencing Evans, who has been charged of Kidnapping, Armed Robbery, Rape, Defilement, Ritual killing, Extortion and Obtaining property by false pretence and other crimes, in accordance with sentencing guideline laid down by the court, would start from the **Nature of the offence**.

As previously stated, when regards are thrown to the nature of the crime, it could go a long way in determining sentencing. All the offences as to which Evans, the accused, has committed are all of a severe nature and this would be taken into consideration as was held by the court in *Adeye v State supra* where the supreme court made its decision based on the severity of the offence.

Secondly, the **Character of the offender**, Evans in this case, would also be considered although this is inadmissible in law. Evans is known for his reputation as a notorious kidnapper and a reputation is what defines a man. It is also mentioned that he has been formerly involved in series of assault, rape, and defilement of young girls. As also stated previously, it would appear that the court works on the assumption that any person with a previous conviction has lost out on the terms of mitigating the sentence. Grounding my consideration of this guideline on this assumption, the character of the accused is not one which would be graced with terms of mitigating the sentence as was held by the court in *Adeleye v Ajibade*, where the court imposed a heavier punishment as a significance to the appellant’s bad character. A heavy punishment would be imposed on the accused based on his notorious reputation and his previous involvement in serious offences.

Again, to mete out a fair and just sentence, the **Position** as to which the accused, Evans has taken **amongst his confederates** would be considered. Meaning, where the accused played a major role in the offences stated, a heavy punishment would be imposed on him and where the accused played a minor role the punishment imposed would be less than that of the

instigator of the offence as was decided by the Supreme Court in *Enahoro v the Queen supra*.

Also, deliberation would be made to the **Rampancy of the offence**. The gravity of this offence would be likened to the rampancy of the offence carried out by the accused. In sentencing the accused, the gravity and rampancy of the offence committed by the accused, that is rape, defilement, ritual killings, armed robbery, kidnapping and other crimes, are very rampant in today's society and are grievous in nature as they are also serious capital offences. Therefore, a heavy punishment would be imposed on the accused to eliminate the rampancy of the offences stated in accord with the position held by the court in *R v Ozoloke supra*.

Furthermore, in considering **Statute of limitation**, the sentencing of the accused would be made in accordance with the classification of offences (i.e. simple offence, misdemeanour and felonies) and also with what has been stipulated by the statute as the punishment for such offences. The sentence for the accused would not exceed the statutory limits which is in line with the decision of *Aremu v IGP* where the court stated that it cannot impose punishment more than that stated by the statute.

Finally, with due consideration to **Concurrent and Consecutive sentences**, in agreement with the Supreme Court's statement '**when offences are of a similar nature or disposition, they should run concurrently**'. The accused person's sentence therefore would be distinguished according to the similarity of its nature and the sentence would be served concurrently.

CONCLUSION

In conclusion, the guidelines stipulated by the Supreme Court would be duly complied with in meting out the sentence of Evans, the accused, so as to deliver the purpose of sentencing which is to contribute along with the crime prevention initiatives, the respect of the rule of law and of a just, peaceful and safe sanctions.

