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MATRIC NUMBER: 17/LAW01/157

LEVEL: 300

COURSE: CRIMINOLOGY

COURSE CODE: LPI 304

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 pretense. 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?

Sentencing is the prescription of punishment by a court to someone convicted of a crime i.e. after an accused person has pleaded or has been found guilty during trial. **The Canadian Sentencing Commission** in 1987 defined sentencing as “the judicial determination of legal sanctions to be on the person found guilty of an offence”. Therefore a sentence can be referred to as punishment ordered by a trial court in a criminal procedure. It refers to the formal legal consequences associated with a conviction. After a criminal defendant is convicted, the judge will decide on the appropriate punishment during the sentencing phase of a criminal case. In some circumstances, the judge is able to enhance or reduce a sentence based on factors specific to the crime and the defendant. A sentence may include fines, incarceration, probation, community services etc. Criminologists believe that sentencing serves two purposes. First, as the goal of deterring future crime by both the convict and by other citizens. Second, a sentence serves the goal of retribution, which posits that the criminal deserves punishment for having acted criminally.

Before a sentence is prescribed by a judge, certain guidelines have been laid down by the Supreme Court in reaching a reasonable just and fair sentence. These basic guidelines include

- I. Nature of the offence
- II. Character/nature of the offender
- III. Position of the offender among his confederates
- IV. Rampancy of the offence
- V. Statutory limitation
- VI. Concurrency of the sentence.

The aforementioned guidelines will enable me as the judge to effectively prescribe a sentence that will be reasonably befitting to the offender, Evans. These guidelines will be further expatiated on.

NATURE OF THE OFFENCE

The principle here is that the nature of the offence committed and of which the accused person has been found guilty goes a long way in dictating or determining the extent of his punishment. The law clearly states that a person cannot be found guilty of an offence which at the time of commission did/ does it constitute a crime in any written law with any prescribed punishment. The court must therefore take into account the nature and circumstances of the offence. In the case of *Adeye & ors v. State*, a case of robbery by violence tried by the High Court of Western States, the court imposed a sentence of 18 years imprisonment on the accused person. On appeal, the WSAC reduced the sentence to 10 years. Unsatisfied with the decision of the Appeal Court, appealed to Supreme Court. The SC reinstated the 18 years sentence with 3 strokes of

cane. The SC stated that the sentence of the Appeal Court was too lenient because of the seriousness and nature of the offence.

However, the nature of the offence as a guideline for sentencing can also be seen in cases of manslaughter. Manslaughter can be referred to as unintended homicide either by provocation or automobile accident. The court tends to impose slight punishments in cases of automobile accidents as opposed to manslaughter by provocation. In *Idoye v. The State*, the accused person drove his car at night without headlamps in a hilled area, he consequently killed a pedestrian. He was sentence to 5 years imprisonment by the High Court in addition to 10 years suspension from driving. He appealed to the SC where his sentence was reduced to two and a half years imprisonment and 5 years disqualification from driving. In contrast to manslaughter by provocation, the courts have tendency to impose an average of 10 years in prison. In *Adekanmi v. The State*, the accused person killed his wife in a sudden overflow of emotion. His wife jeered at him, who happened to be an illiterate, tainted him with being impotent and that their children belonged to another man. This was held to be sufficient provocation to the offence from murder to manslaughter and imposed a term of 15 years imprisonment. Provocation is a defense to murder recognized by the Nigerian Criminal Code and Penal Code. It serves as a mitigating factor and reduces the offence of murder to manslaughter. The punishment prescribed by the law for manslaughter is life imprisonment but the judges can apply their discretion in determining the extent of sentence to the convicted person.

CHARACTER/ NATURE OF THE OFFENCE.

As a principle of law and a rule of evidence, character evidence is unacceptable in law. However when the character of an accused person raises questions, the evidence of his character becomes acceptable in law. In *Adeleye v. Ajibade*, the appellant's bad character was significant in the restoration of a heavier punishment on him. In *Adeyeye v. The State*, part of the reasons advanced for the reinstatement of the 18 years was that the accused had been earlier convicted of an offence. It appeared that the court worked on the assumption that anyone involved in previous conviction has lost out in terms of mitigating his sentence. Also, in *R v. State*, the fact that the appellant had been previously convicted for defilement led the court to increase his sentence from 18 months to 5 years imprisonment with hard labor.

POSITION OF THE OFFENDER AMONG HIS CONFEDERATES.

WHEN THE OFFENDER PLAYS A MAJOR ROLE.

In the case of *Enahoro v. Queen*, Enahoro was sentenced to 15 years by the High Court for treasonable felony. The SC reduced the sentence to 5 years on the basis that the sentence of a lieutenant should never be more than that of the leader as the leader of the gang should be punished more severely than the lieutenants. The decision of the SC further affirmed that those who instigate the crime should be punished more than those who instigated it. This guideline is a clear example of parties to an offence under the criminal law.

PLAYING A MAJOR ROLE

The offender who has played a much more major role in the commission of a crime than his counterparts who only played minor roles is usually given more severe punishment. The principle above justified in the case of *Queen v. Muhammad & ors*. In the case, the first appellant was given a maximum sentence of 8 years imprisonment, the other parties were given a maximum of 5 years reason being that the first appellant had probably played a major role in the commission of the crime. It should however be noted that the party playing the major role must not necessarily be the leader of the gang. This is seen in the case of *State v. Kerenku*, where the appellant was not found to be the leader of group, the court however reviewed that she played a leading part in the incident and that must be taken into consideration.

RAMPANCY OF THE OFFENCE

Where an offence is rampant or widespread, courts have always thought that severity of punishment imprisoned will aid in stamping out the crime. In *R v. Hassan & Owolabi*, the accused person was sentenced to 5 years for forgery and another 5 years for stealing by the HC. He appealed to the SC and it expressed its views thus "fraud on the customs are shockingly prevalent and forgery of the commercial documents strikes at the roof of all credits, we are not disposed to reduce the sentence by one day". Also in *State v. Michael Ayegbeni*, it was because of the court's view in *state v. anor*, that robbery on roads and water in recent times has been on increase and disturbing that two parties in the robbery were sentenced to 20 years imprisonment. Rampancy of the offence is one of the most compulsory considerations, as it can either alleviate or intensify the offence. Some offences are been considered as serious in nature e.g. sexual offences involving children. In *State v. Adeboye*, a 3 years term was imposed on an offender who inserted his finger into the vagina of a 9 year old girl selling groundnut. Robbery with violence is also under such offences. The gravity of an offence can also be likened to the rampancy of an offence. If such is considered rampant and grievous, the court will most likely impose a heavier punishment with the aim of deterrence.

Application'

STATUTORY LIMITATION

Statutory limitation or statute of limitation is the law that sets the maximum time the parties involved in a crime have to initiate legal proceedings from the date of an alleged offence, whether civil or criminal. It is a law that forbids prosecutors from charging someone with a crime that has been committed with more than a specific number of years. The purpose and effect of statute limitations are to protect defendants and to ensure that conviction takes place only upon evidence that has not deteriorated with time. Not all crimes are governed by statute limitations. They are two types of statute limitations in Nigeria

- I. Statutory maximum, the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendants. In the case *Queen v. Eyo & ors*, a case of unlawful assembly. The HC sentenced them to 5 years imprisonment. On appeal to the SC, it was reduced to 3 years because that was the maximum sentence prescribed by the law.

- II. Magisterial jurisdiction limitation, in the case of *Mordi v. C.O.P*, the magistrate court sentenced the accused person to 2 years in prison and the HC later increased it to 10 years. On appeal, the SC reinstated the earlier imprisonment of 2 years because that was the limitation of the magistrate court.

CONCURRENT AND CONSECUTIVE SENTENCE.

There are laws governing concurrent and consecutive sentences. Concurrent sentences run concurrently i.e. the defendant serves all sentences at the same time. When sentences run consecutively, defendants have to finish serving the sentence for one offence first before they start serving the sentence for another offence they must have committed. Where a person is charged and found guilty of two or more offences in Nigeria, the general rule is that the sentences shall run concurrently. The SC solidified this position by saying that "wherever the offences are of similar nature they should run concurrently". In the case of *Nwafor v. State*, the accused person was found guilty of store breaking and possession of breaking equipment. The SC held that the sentencing should run concurrently, because they emanated from the same transaction.

From the guidelines provided by the Supreme Court, sentencing the accused person Evans has somewhat being made easier as the purpose of the guidelines is to ensure fair and just imposition of punishment. The crimes that Mr. Evans has been involved in are numerous and of different gravity. In light of the aforementioned, the nature of the offences, offences in this case must be critically considered in order to prescribe proper punishments. As the principle states, the nature of the offence committed and of which the accused person has been found guilty goes a long way in dictating or determining the extent of his punishment. Evans has been found guilty of numerous grievous offences including rape, armed robbery, defilement of young girls among others, this will go a long way in determining the extent of punishment to be prescribed. He has been found guilty of offences that have been clearly stated with prescribed punishment by the law.

It can also be seen that Evans has lost out in terms of mitigating his sentence based solely on the fact that his character is questionable before the court. His character towards crimes has shown that he lacks remorse and therefore will have no problem going back to a life of crime. The position Evans took in the commission of these crimes will also determine the sentences imposed on him. From the facts of the case presented before the court, it was deduced that Evans was at the forefront of the kidnaps and robberies as he was the leader of the crime group and instigated and played a major role in the commission of the other crimes and as such will attract sever punishments than his confederates.

The rampancy of the offences committed also affects sentencing. Rampancy has also being likened to the gravity of the offence. Evans was found guilty of sexual offences and armed robbery which have been prescribed by the crimes constituting serious crimes and as such severe punishment will imposed with the aim of deterrence. Although the courts have jurisdiction to impose punishment, we must also act in line of statute limitations. The law has prescribed punishments for crimes and the courts must not go beyond or below the prescribed punishments given by the courts. The Criminal

Code has prescribed punishments for the crimes which Evans committed as follows: kidnap (Sec.364 C.C 10 years imprisonment), armed robbery (Sec. 402 C.C death penalty), assault (Sec.351 C.C one year imprisonment), rape (Sec. 358 C.C life imprisonment with/out caning), defilement of young girls (Sec. 221 two years imprisonment with/out caning), ritual killing which amounts to murder (Sec.319(1) death penalty), obtaining property by false pretense (Sec. 418, 419 3-7 years imprisonment) etc.

As a judge, the above punishments must be taken into consideration while deliberating and also while imposing sentences. Evans was found guilty of more than one crime, each with varying punishments. The court must therefore decide if Evans will serve his terms concurrently or consecutively. In order to achieve this, the principle with states that times should be served concurrently where offences are of the same nature must be applied. We must go ahead to find those crimes Evans has committed that are of the same nature and ensure he serves both term concurrently. There is however a tricky spot due to the fact that some of the crimes have life imprisonment and death penalty as punishments. In this situation due to the severity of the crimes committed and application of other guidelines laid down, a death penalty may be given to cover all crimes committed.