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WHAT IS SENTENCING?

Sentencing can be defined as a definite order pronounced by a court of competent jurisdiction at the end of a criminal proceeding or trial after the finding of guilt against the accused. In **ICHI V STATE**, it was held that a sentence is 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 executed. **S. 248 CPA** provides that if the court finds the accused guilty, the court shall pass sentence on the accused or make an order to reserve judgement or adjourn the case to another date.

The guidelines set out by the Supreme Court of Nigeria to aid courts in reaching a reasonable, just and fair sentence include;

1. Nature of the offence.
2. Character and nature of the offender.
3. Position of the offender among its confederates.
4. The rampancy of the offence.
5. Statutory limitation.
6. Concurrency of the sentence.

1.) NATURE OF THE OFFENCE

The nature of an offence committed by the accused person of which he has been found guilty of serves also as a major determinant in the extent of the offender's punishment. According to **S. 36(8) CFRN 1999 (as amended)** "no person shall be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed." In **ADEYE & ORS V STATE**, a case of robbery by violence tried by the High Court of the Western state. The court imposed a sentence of 18 years imprisonment on the accused. On appeal the Western State Appeal Court reduced the sentence to 10 years. The accused person unsatisfied with the decision of the Appeal Court appealed to the Supreme Court. The Supreme Court re-instated the 18 years with 3 strokes of cane. The Supreme court stated that the sentence of the Appeal Court was too lenient due to the seriousness of the offence.

In the given case of Evans, the offences charged against Evans are serious offences and are classified as felonies punishable by prison terms of three years and above. These offences and their punishment include;

- a. **Rape: S. 358 CC** provides that: "any person who commits the offence of rape is liable to imprisonment for life, with or without caning
- b. **Defilement:** According to **S. 218 CC**, "any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony and is liable to imprisonment for life, with or without caning.

- c. **Kidnapping:** According to **S. 364 CC**, “any person who unlawfully imprisons any person, takes him out of Nigeria, without his consent or unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to a court for his release or from discovering to any other person the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned; is guilty of a felony, and is liable to imprisonment for ten years.
- d. **Armed robbery: S. 402(1) CC** provides that any person who commits the offence of robbery shall upon conviction be sentenced to imprisonment for not less than twenty-one years. An offender who possesses firearms or offensive weapons or any chemical material or is accompanied by an armed person, or wounds any person before, during or after the commission of the offence is liable to be sentenced to death. See **S.402(2)(a)-(b) CC**.
- e. **Ritual killing:** This is a felony punishable by death.
- f. **Extortion: S. 408 CC**
- g. **False pretends:** According to **S. 419 of the Criminal Code**, any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a felony and is liable to imprisonment for three years.

2.) CHARACTER AND NATURE OF THE OFFENDER

As a principle of law character is admissible in law. Therefore, when the character of the accused is in question, the evidence of his character becomes admissible in law. In the case of **ADEYEYE V STATE (SUPRA)** among the various reasons for the reinstatement of the 18 years imprisonment the accused was to serve was that the accused had been convicted of an offence in the past. The court worked on the assumption that anyone with a previous conviction has lost his/her chances in mitigating a sentence.

In **R V BANGAZA**, the accused person with a heavy stick deliberately assaulted the deceased with the intention to do him harm by way of revenge for an assault committed by the deceased children on the appellant’s brother. Death resulted and the appellants were charged therefore, convicted and appealed. After the murder, the appellants ran away to a place in Borno, they surrendered themselves early in 1959 and were tried in 1959. At the time of their offence, the appellants were 17 years of age but not old enough to be criminally responsible. By the time they were convicted, they were above the age of 17 years. Dismissing the appeal and holding that they were rightly sentenced to death, **Adenoma CJN** as he then was said:

“under S. 368(3) Criminal Procedure Act, it is the age of the offender at the time of his conviction that is material and it seems clear that the appellant cannot invoke the provisions of the section but the responsible authorities with no doubt gives such weight as he thinks fit to the possibility that if the appellants had not

run away and had been brought to trial at the time the offence was committed, the section would have applied thus the appellants appeal was dismissed."

3.) POSITION OF THE OFFENDER AMONG HIS CONFEDERATES.

Offenders in the commission of an offence can be categorized into two roles;

1. The major role
2. The minor role

a.) When the offender plays a major role

The offender who plays a major role in the commission of an offence attracts more punishment than those considered to be minor participants. This thought was given judicial recognition in the case of **QUEEN V MOHAMMED & ORS** where the first appellant who was the leader was given a maximum sentence of eight years imprisonment while the other appellants were given a maximum of five years imprisonment. Also in **IHUM V TIV NATIVE AUTHORITY**, the appellants were involved in a riot that led to the death of many animals. The total sentence summed up to six years imprisonment except the sixth appellant who got an eight year sentence for being the moving force of the riot.

Evans in this case is the leader of his gang and is liable to attract more punishment to himself than his accomplice if any were apprehended and found guilty.

b.) When the offender plays a minor role

The Supreme Court in the case of **ENAHORO V THE QUEEN** a case of treasonable felony, reduced the fifteen years imprisonment imposed on Enahoro to five years imprisonment and held thus "a sentence imposed on the lieutenant should never be more than that of the leader. The leader of a gang should be punished more severely than the servant. This is to affirm that those who instigate a crime should be given more punishment than those instigated since the leader is always the centre of the activity, the moving force and the progenitor of the crime.

4.) THE RAMPANCY OF THE OFFENCE

Where an offence occurs frequently, the court has in thought that the severity of the punishment will help in deterring people from committing the offence. Rampancy of the offence committed is one of the most important ingredient as it can be a litigating factor or an aggravating one depending on the offence. Some offences that have been considered as serious in nature include; sexual offences especially when it involves children as victims. In **STATE V ADEBOYE** a three years sentence was imposed on the offender for inserting his finger into the private part of a little girl who was hawking groundnut. Robbery with violence is also considered a serious offence in nature. In **OLANIKPEKUN V STATE** during a

robbery, the leader ordered one of his followers to shoot a victim. He complied but the gun jammed. The court held *inter alia* that the society demands that such as deemed should be kept out of circulation for a period of time.

Similarly, in **R V OZULUKWE** where the appellant met a girl of about 8 years on the village road. He covered her eyes with his hands and stuck bread into her mouth and took her into the bush, laid her on the ground, stood on her hand and poured acid on her body and cut off her left ear, forced her eyes open and poured acid in them. He later ran away leaving her unconscious. He was sentenced to twenty years imprisonment as deemed adequate by the court.

In conclusion, due to the rampancy of the offences of kidnapping, armed robbery, defilement, ritual killing, etc it is in the position of the court to ensure that the punishment to be imposed on the offender is severe enough to deter him and others from committing such crimes.

5.) STATUTORY LIMITATION

The criminal statute of limitation is a law that restricts the prosecutor from charging a person with a crime that was committed more than the specified years. The general purpose of the statute of limitation is to make sure that convictions occur only upon evidence that has not deteriorated with time. After the period stipulated by the statute has elapsed the criminal is essentially free.

It is also important to note that not all crimes are governed by the statute of limitation. For example, murder and in some states sexual offences, assault, forgery. There are two types of statutory limitations in Nigeria; statutory maximum and magisterial juristic limitation. When a statute itself stipulates terms of imprisonment no court has the power to exceed its limits. In **AREMU V IGP** the magistrate court sentenced the accused to two years imprisonment. Dissatisfied with the decision of the court, the state appealed to the Supreme Court. The Supreme Court stated the it cannot impose punishment more than what the Magistrate court has imposed. In **MORDI V COP**, the Magistrate court sentenced the accused person to two years imprisonment and the High Court later increased the sentence to ten years imprisonment. On appeal, the Supreme Court reinstated the earlier imposition of two years because that was the limitation of the Magistrate court.

6.) CONCURRENT AND CONSECUTIVE SENTENCE

There are two forms of sentencing; concurrent sentencing and consecutive sentencing. Concurrent sentencing is a form of sentencing in which the defendant who has been charged and found guilty or pleaded guilty to two or more offences is allowed to serve his/her sentences at the same time. While consecutive sentencing is a form of sentencing in which the criminal serves his/her sentences one after the other. There are laws governing concurrent and consecutive sentencing. When a person is charged and found guilty by the court of two or more offences in Nigeria, the general rule is the sentences should run concurrently. The

Supreme Court held this notion by saying “whenever the offences are similar or of similar nature/disposition, they should run concurrently.

In **NWAFOR V STATE**, the accused person was charged, found guilty and sentenced for store breaking and possession of breaking implements of the same transaction. The Supreme Court held that the sentencing should run concurrently because they are of the same nature.

Therefore, Evans shall serve all his sentences concurrently since the offences which he is being convicted of are not of similar nature.