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CRIMINOLOGY II

LPI 304

SENTENCING ASSIGNMENT

LPI 304

ANSWER

Before laying down and explaining the basic principles or guidelines to aid the reasonable ,just & fair trial of Evans, it is important to start by giving an in depth explanation of the term sentencing.

According to **Wikipedia** the term sentence in law refers to punishment that was actually ordered or could be ordered by a trial count in criminal procedure. The sentence can generally involve a decree of imprisonment a fine and / or punishment against a defendant convicted of crime. It is also simply known as judgment declaration made by a judge in a case.

Sentencing also means the prescription of punishment by a court to someone convicted of a crime.

**The Canadian sentencing commission** in 1987 defined sentencing ass judicial determination of legal sanctions to be imposed on person found guilty of an offence.

Another well explained definition of sentencing can be found in the case of **Ichi v State**, Where it was held that sentence is the judgment formally pronounced by the court or judge upon an accused person after his conviction in a criminal or prosecution imposing the punishment to be inflicted. In other words, it is judgment formally declaring to the accused person, the legal consequence of the guilt which he has confessed to or which he has been convicted of.

However, the most accepted definition of a sentence, is that, A sentence is the definite position/order pronounced by a court of competent jurisdiction at the end of a criminal trial after the finding of guilt of the accused person.

**Section 248 of the criminal procedure Act** provides that if the court finds the accused person guilty, the court shall pass sentence on the accused person or make an order to receive judgment and adjourn the case to some other date.

Sentencing has some objectives such as

* To denounce unlawful conducts, to deter the offender & other persons from commiting offences.
* To separate offenders from society where necessary, to assist in rehabilitating offenders,
* To promote the sense of responsibility in offenders/acknowledgment of harm done to the community & victims.

My guide in sentencing Evans is drawn from the six guidelines/principles laid down by the Supreme court in other to aid courts in reaching reasonable, just and fair sentence.

They are:

1. **Nature of the offence:** As a principle of law & practice, the nature of the offence committed by an accused person (defendant) of which he has been found guilty goes a long way of determining the extent of his punishment. The law is clear that a person cannot be found guilty of an offence which as at the time being committed does not constitute a crime in any written law & its punishment clearly stated.

There a quite a number of cases in which sentencing altered/affected by nature of the offence committed.

An example is the case of **Adeyeye & Others 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 western state appeal court reduced the sentence to 10 years. The accused person unsatisfied with the decision of the appeal court yet appealed to the supreme court. The Supreme Court reinstated the 18 years with 3 strokes of cane. The Supreme Court stated that the sentence of the appeal court was too lenient because of the seriousness of the offense.

In **Adesanya v The Queen,** which was a case of forgery, the principle was established that only in exceptional cases can a fine be sufficient/ appropriate punishment for forgery of court processes.

There is a tendency of the court to impose slight penalties/ punishment in automobile homicide as opposed to provocation murder.

A case example is **Idoye v The State,** where the accused person who was sentenced to 5 years imprisonment by the High Court in addition to 10 years suspension from driving had his sentence reduced to two and a half years imprisonment and five years disqualification from driving.

Also in the case of **Muhammed v COP**, where the accused who was initially sentenced to 3 years imprisonment and 10 years disqualification from driving by the High Court had his sentence reduced to 18 months imprisonment and 5 years disqualification of driving by Supreme Court.

In Provocation, there is a tendency to impose an average term of 10 years. A case example is **Adekanmi v The State**, where the accused person who killed his wife in a sudden overflow of emotions when she told him that her children belonged to her lover and he is impotent. The Supreme Court upheld his defense of provocation and imposed a term of 15 years imprisonment.

1. **Character/Nature of Offender**

It is known that when the character of the accused person is in question, the nature/evidence of his character becomes admissible in law.

In **Adeleye v Ajibade,** the appelants bad character was significant in the restoration of a heavier punishment on them.

In **R v State,** the fact that the appellant had been previously convicted for defilement led the court to increase the sentence from 18 months to 5 years imprisonment with hard labour.

1. **The Position of the offender among his confederates**

This can be seen in two ways, which are;

1. When the offender plays a minor role, and
2. When the offender plays a major role
3. A case example of this is **Enaoro v The Queen,** a case of treasonable felony, Enaoro was sentenced to 15 years imprisonment by the High Court. Supreme Court reduced sentence to 5 years and said the sentence imposed on the lieutenant should never be more than the leader. 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 instigated. In that case, the late Awolowo, the leader got 10 years sentence, so the lieutenant should not get a sentence higher than 10 years.
4. The offender who has played a major role in commission if a crime is usually visited with more severe punishment than those inflicted on minor participants. This idea was given judicial recognition in **Queen v Muhammed and others**, where the leader was given a maximum sentence of 8 years imprisonment, other participants were given a maximum sentence of 5 years imprisonment.

In **State v Koronku,** although appellant was found not to be the leader, court was however of the view that she played a leading part in incident and must take that into consideration

Another case example is **Ihom and Another v The Tiv Native Authority**

1. **Rampancy of the Offence**

The Court has always been of the opinion that where an offence is rampant or prevalent, severity of punishment imposed will aid in stamping out the crime.

A case example is **State v Michael Ayegbemi**, it was because of the court’s view in State v Another that robbery on roads and water in recent times had been on increase and disturbing that the 2 parties to the robbery were sentenced to 20 years imprisonment.

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 but the Supreme Court did not reduce the sentence due to its rampancy.

Another case example is seen in **Onyilokwu v C.O.P**, the offender was initially detained of causing harm and later he unsuccessfully tried to escape and was additionally charged with escaping from lawful custody although he was later discharged and acquitted, the court expressed the view that 3 years imprisonment earlier imposed on him did not show adequate consideration not only for his first offender status but also for an offence which was not prevalent in that community.

1. **Statutory Limitation**

Many states have adopted systems that classify felonies by category- felonies, misdemeanours and simple offences.

In Nigeria, there are 2 types of statutory limitation

1. Statutory maximum
2. Magisterial jurisdiction limitation

Whenever a statute itself stipulates a term of imprisonment, no court should exceed its limit.

In **Queen v Eyo and others**, a case of unlawful assembly, the High Court sentenced them to 5 years imprisonment on appeal to Supreme court, Supreme Court reduced the sentence to 3 years because that was the maximum sentence stipulated by law.

A case example is **Mordi v C.O.P**, the magistrate court sentenced the accused person to 2 years and the high court later increased it to 10 years. On appeal, the Supreme court revisitated the ealier imposition of 2 years because that was the limitation of magistrate court.

Another case example is **Aremu v IGP**, where the magistrate court sentenced the accused person to 2 years imprisonment, dissatisfied, the State appealed to the Supreme Court. The Supreme Court stated that it cannot impose punishment more than what the magistrate court imposed.

1. **Concurrent and Consecutive sentences.**

The general rule is that whenever a court finds an accused person guilty of more than one offence, the sentences should run concurrently. The Supreme Court held this position by saying “wherever the offences are of similar nature/ disposition, they should run concurrently.

A case example of this is seen in **Nwankwo v The State.**

The above mentioned guidelines are expected to be a guideline in sentencing Evans justly, fair and reasonably. Therefore, the following steps will be followed in sentencing Evans.