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ONLINE ASSIGNMENT

Evans, a notorious kidnaper and armed robber, who has been involved in series of assault, rape and defilement of young girls, has finally been apprehended by the police. He was arrested at 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 High Court where you are the presiding Judge. After a long trial, you found Evans guilty of all 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?

ANSWER

The issue in the above question borders on the laws governing sentence practices. First and foremost, it is important to explain the meaning of sentence or sentencing and the purpose of sentencing. Sentencing is the administration of punishment by a court of competent jurisdiction to a person/persons convicted of a crime. The *Canadian Sentencing Commission (1987)* defined “sentencing” as the judicial determination of legal sanctions to be imposed on a person found guilty of an offence. In the case of *Ichi v State*¹, sentencing was defined as a judgment formally pronounced by the court or Judge upon an accused person after his conviction in criminal prosecution imposing the punishment to be inflicted, in other words, it is the judgment formally declaring to the accused person the legal consequences of the guilt, which he has confessed to or which he is convicted of. The purpose of sentencing is to denounce unlawful conduct, to deter the offender or others from committing offences, to separate the offenders from the society, to assist in rehabilitating offenders and to promote the sense of responsibilities in the offenders and acknowledgement of the harm done to the community especially their victims.

In Nigeria, when sentencing an accused person accordingly, there are some laid down that the Supreme Court provided in the case of *Mohammed v Olawumi*². These guidelines can cause a mitigation or increment to the sentence of an accused person and they are; the nature of the offence, the character of the offender, the position of the offender among his confederates, the rampancy of the offence, statutory limitation and occurrence of the offence. These guidelines will be explained serially in the below paragraphs and applied to the relevant question.

The nature of an offence greatly influences the sentence or extent of punishment for a convicted person. According to law, a person cannot be found guilty of an offence which at the time been committed does not constitute a crime in any written law and its punishment clearly stated. Also, a serious offence will attract a harsher punishment than a less serious offence. Similarly, in the case of *Adeyeye & ors v State*³ the Supreme Court reinstated the 18 years imprisonment with three strokes of the cane because of the serious of the offence robbery. Likewise, in the case of *Adesoya v The Queen*⁴ the appellant court held that the payment of fine was a lenient punishment for the grievous offence of forgery hence imprisonment. Therefore, in the relevant case of Evans, the nature of the offences committed by him are serious and grievous, thus Evans will receive a harsher sentence according to the provided punishments for each offence he is convicted of. The offences committed by Evans are seen as grievous in nature because offences like rape, armed robbery etc are seen as felonies and felonies are seen by law as serious offences.

¹ (1996) 9 NWLR (pt 47083 at 89).

² (1993) 4 WLR (pt 288, 348 at 401, paragraph a-h)

³ SC.305/2010 3PLR/2013/142

⁴ (1964)

The character of the offender in the rule of evidence, or the evidence of character is inadmissible in law, but when the character of the convicted person is in question, the evidence of his character becomes admissible. Hence, first offenders stand a chance of receiving lenient punishments than those who have been convicted of previous offences. In the case of *Regina v State*⁵, the court increased the appellant's punishment from 18 months to 5 years imprisonment because the appellant was convicted previously for defilement. Also, the bad character of the appellants in the case of *Adeleye v Ajibade*, warranted the restoration of a heavier punishment on them. In the case of Evans, his character or nature will never result to a mitigation of his sentence but rather an increase. He is not only involved in one offence but several offences and by his character, he is described as a notorious kidnapper and armed robber. It is right to say that Evans is meant to receive the punishment of the law in full.

The position of the offender among his confederates as a parameter in sentencing practices takes note of whether the offender played a major or minor role in the commission of the offence. This guideline is usually considered when the accused person was involved with others in the commission of the crime. Usually, if the accused person plays a major role in the commission of the offence, will receive a higher punishment compared to those who played a minor role. In the case of *Enahoro v The Queen*⁶ the court held that a lieutenant cannot receive a higher punishment than the gang leader. While, in the case of *State v Kerenku*⁷, although the appellant was not the leader, but she played a leading part in committing the offence. In the pertinent case, the position of Evans among his confederates cannot be considered because Evans is perceived to be the only one who participated in the commission of all the offences he is being convicted of.

Rampancy of the offence as a ground to determine sentencing looks at how widespread is the offence a convicted person is charged off. When an offence is rampant, the court will usually prescribe a severe punishment to curb such crimes. Rampancy of the offence is one of the most necessary considerations as it can be a mitigating or aggravating factor depending on the offence. In the case of *R v Hassan & Owolabi*⁸ the sentences of the appellant could not be mitigated because the offences of stealing and forgery are rampant. In the case of Evans, the offences he been charged of are rampant and by law, they are grievous and critical offences, which its punishments cannot be reduced because they are rampant in the society. Hence, to stab out offences like rape, kidnapping and armed robbery, Evans punishment has to be severe in order to deter others from committing such offences.

⁵ (1997) 1 W.L.R 839

⁶ (1965) 1 ALL NLR 125

⁷ (1965) 2 ANLR 141 at 142

⁸ (SC.44/2002) [2014] NGSC 1

Statutory limitation is another basis for sentencing. The general purpose of statutory limitation is so that, convictions occur only upon evidence that has not barred with time. Statutory limitation is also where the state has already stipulated the sentence for an offence; the court cannot extend its limits. Equally, in case of *Queen v Eyo & ors*⁹ the Supreme Court reduced the sentence to 3 years imprisonment, because that was the maximum sentence by law. However, it's not all crimes that are governed by statute limitation for example kidnapping. Offences are usually classified in felonies, simple offences and misdemeanor. Felonies are offences which usually attract severe punishments because of their nature and the stated punishments by law, they are usually not mitigated. In the case of Evans, the offences committed by him will only attract harsh sentence because they are mostly classified as felonies and by the Nigerian Law, 3 years is the minimum for felonies.

Occurrence of the offence as a standard to determine sentencing is similar to rampancy of the offence. When the rate of an offence is high, there is a tendency for there to be a punitive punishment in order to abate such offence. For example, the increase in the rate of cybercrimes warranted the severity of punishments for offenders. Also, the punishment for kidnapping is more than the punishment for the illegal sale of army uniforms is because the rate of kidnapping is higher than the rate of illegal sale of army uniforms, aside from the fact that kidnapping is more severe than the illegal sale of army uniforms. Therefore, in the pertinent case, the punishment of Evans will be severe because the rate of occurrence of offences like kidnapping, rape, ritual killing, defilement and armed robbery are high, so in order to curb them, the sentence that will be prescribed to Evans has to be harsh.

In conclusion, as the presiding Judge, in the process of sentencing Evans, the guidelines provided by the Supreme Court are being taken into consideration. These guidelines are; nature of the offence, character/nature of the offender, the position of the offender among his confederates, rampancy of the offence, the statutory limitation and the occurrence of the offence. These guidelines served as a determinant to either mitigate or aggravate the sentence of Evans.

⁹ (1962) LCN/1015 (SC)