

NAME: BELLO MIKILU ELIZABETH

MATRIC NO: 17/LAW01/079

COURSE CODE: LPI 304

COURSE TITLE: CRIMINOLOGY II

ASSGNMENT: 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 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?

A criminal trial in Nigeria as per the laws of the land, involves the state and the individual(s) alleged to have committed a crime. The criminal justice system was established to arrest, arraign, try and punish criminal offenders through the intervention of the state law enforcement agencies, thus in a criminal trial, conviction and sentencing are done at the end of the trial as the concluding element. The court at the end of trial is empowered to deliver judgement upon the accused after his conviction and impose sentence on him usually in form of a fine, imprisonment or other punishment. To decipher the guidelines of sentencing, one must first understand what sentencing is. The Oxford Advanced Learners Dictionary defines sentencing as ‘the act of pronouncing a judicial sentence on someone convicted of a crime’. It is also defined as a definite order pronounced by a court of competent jurisdiction at the end of a criminal trial after the finding of guilt on the accused person. A sentence is the pronouncement by the court upon the accused person after his conviction in criminal prosecution imposing the punishment to be inflicted¹. In other words, it is the judgement formally declaring to the accused person the legal consequences of the guilt which he has confessed to or which he has been convicted of. Okonkwo and Naish in their views stated that “if punishment is the object of criminal law, then sentencing is simply the way which principles of punishment are applied to individual offenders”. Sentencing is the post-conviction stage of the criminal justice process in which the defendant is brought before the court in imposition of penalty² and its primary goals are punishment, deterrence, incapacitation and rehabilitation.

The importance of sentencing can therefore not be emphasized and the court must take care in ensuring that sentences are just, fair and reasonable to the offender and the state alike. Hence, the Supreme Court in Nigeria has laid down 6 guidelines to aid the court in reaching just and fair sentences. The guidelines are;

1. Nature of the offence
2. Nature/character of the offender
3. Position of the offender among his
4. Rampancy of the offence
5. Statutory limitation
6. Concurrency of the sentence

The above guidelines will be discussed seriatim;

1. Nature of the offence: the general rule of law is that the nature of the offence determines the type of sentence to be given by the court. The nature of the offence refers to the seriousness of the offence and the gravity of its impact on the victim and the society. The law classifies offences based on their seriousness into felonies, misdemeanours and simple offences and it also specifies the quantum of sentences for these offences based on the classification. In determining the nature of the offence, the offence must already be in existence. Section 36(8) 1999 CFRN provides that “No person shall be held guilty of a criminal offence on account of any act or omission that did not, at the time it took place,

¹ Fundamentals of Criminal Procedure Law in Nigeria by Bob Osamor

² The freedictionary.com

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”, this means that an accused person can only be charged and penalized under an enactment which was in force at the time of the alleged criminal offence and the penalty to be given would depend on the stipulation of the law. The seriousness of the offence plays a big part in determining the extent of the sentence. The constitution requires that the penalty for an offence to be prescribed in a written law but in practice, it means that the written law sets down the maximum punishment for an offence as a rough guide to how serious the offence is considered to be. Example, sections 316 and 319 provides for the offence of murder and its punishment respectively, the punishment being death categorizes murder as a felony, a grave and capital offence. For a minor offence where deterrence is thought appropriate and likely to be effective a fine may be sufficient but where the offence is grave but it is still felt that consideration of the individual offender should be paramount, then there may be a sentence of imprisonment to a reformatory institution, thus in *Etim v. the Queen* (1964) where it was held on appeal that the seriousness of the offence of forgery of court processes makes it grievous and the payment of fine was too small a punishment for the grievous offence of forgery and it imposed a sentence of imprisonment on the accused.

According to the gravity of the offence, the courts are faced with two decisive stages, they have to decide what principle of punishment should be applied pending on the facts of the case and then they must decide on which type and what quantum of sentence will accord with it. The decision of the court is however subject to the prescription of the statute under which the accused was arraigned. The court in its discretion may impose slight penalties on the offenders depending on the aggravating and mitigating factors of the case. In *Adekanmi v. the state*³, the accused 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 a term of 18 years imprisonment despite the fact that the defence of provocation had mitigated the offence from murder to manslaughter punishable with life imprisonment, the sentence was reduced by the discretion of the court.

2. Characteristics/nature of the offender: as a principle of law and rule of evidence, evidence of character is inadmissible in law. This means the previous records of the accused cannot be disclosed in a proceeding without justifiable cause. When the character of the accused person is in question, the evidence of his character becomes admissible. In *Adeyeye v. the state* among the reasons why the Supreme Court reinstated a heavier penalty of 18 years was that the accused person has been convicted of an offence committed earlier. It then appears that a previous conviction may be an aggravating factor in sentencing. Therefore, it is no surprise that in *R v. Regina*, the fact that the appellant had previously been convicted for defilement, led the court to increase the sentence from 18 months to 5 years imprisonment with hard labour.

Moreover, it is not only the nature of the offender based on his previous records that could be considered but the behavioural pattern and mode of response to external stimuli.

In situations where the accused seems to be non-repentant and adamant in the rightfulness of his wrong actions, the court in its discretion may view such behaviour as one that may deserve a heavier punishment. Also, the age of the offender must be taken into consideration in sentencing. As a general rule, a person under the age of 7 years is not criminally liable for any act or omission allegedly committed and a person under 12 years is not criminally responsible for any act or omission unless it is proved that at the time of doing the act, he had the capacity to know that he ought not to do the act or make the omission⁴. The law provides that a person under the age of 17 years shall not be sentenced to death if found guilty of a capital offence⁵. Age is therefore a very important factor in sentencing and can affect the decision of the court. In *State v. Olowolaiyemo*⁶ the accused a hunter who was seventy years old mistakenly shot and killed the victim who was on top of a palm tree mistaking him for a monkey. The court considered his age and poor health and sentenced him to 12 months imprisonment or fine of 200 pounds for the offence of manslaughter.

However, it must be cleared that according to the provisions of the criminal procedure act, it is the age of the accused at the time of conviction that is material. In *r v. Bangaza* where the accused persons after committing a deliberate assault with intent to cause grievous harm on the victim which led to his death ran away and evaded capture. At the time of committing the offence, they were 17 years old, they returned years after and surrendered. On appeal, they attempted to use the 17 years rule in the CPA but their claim was dismissed by the court per Adenoma CJN, where he stated that the appellants cannot invoke the provision of the section since it is the age at the time of conviction that matters and if the appellants had not run away and had been brought to trial once the offence had been committed, the section would have applied.

3. Position of the offender among his confederates: this applies to instances where more than one person is involved in the commission of a crime. In such cases the accused either plays a minor role or a major role
 - a. Minor role: when the offender plays a minor role, it is reasonable that the sentence given should be less than that given to the person who played the major role. A minor role offender usually only becomes party to an offence because he was instigated and influenced by the leader, there may have been use of undue influence or even duress. In *Enahoro v. the state*, a case of treasonable felony where the accused was sentenced to 15 years imprisonment by the high court. The Supreme Court on appeal, reduced the sentence to 5 years imprisonment and stated that the sentence imposed on a lieutenant should never be more than that on the leader. The leader of a gang should be punished more severely and those who instigate should get higher punishments than those instigated. The leader is usually the epicentre of the activity, the moving force and the progenitor.
 - b. Major role: the offender who has played a major role in the commission of an offence usually gets inflicted with a more severe punishment than those who play

⁴ Criminal Code s. 30

⁵ Criminal Procedure Act s.368(2)

⁶ Charge no. HAD/7C/74 Ado-Ekiti (unreported)

minor roles. This was recognized in the case of *Queen v. Mohammed & ors*, where the first appellant who was the leader was given the maximum sentence of 8 years imprisonment and the other parties were given sentence of 5 years imprisonment. Also, in *Ihon & ors v. Tiv Native Authority* where the appellants were involved in a riot in which many animals were maimed and killed, they all got sentences adding up to the total of 6 years imprisonment, except the 6th appellant who got 8 years imprisonment for being the moving force of the riot.

4. Rampancy of the offence: this is one of the most necessary considerations. The rampancy of the offence refers to the frequency of the occurrence of the offence in the society and may be a mitigating or aggravating factor in sentencing. The rampancy of an offence may aggravate the sentence but if the offence is not rampant, it may mitigate the sentence. Where an offence is rampant, the courts have always thought the severity of punishment would aid in stamping out the crime. In *Rv. Hassan & Owolabi*, the accused person was sentenced to 5 years for stealing. They appealed and the Supreme Court expressed its views thus "fraud on the customs are shockingly prevalent and the forgery of commercial documents strikes at the root of all credit, we are not disposed to reduce the sentence by one day". Also, in *State v. Micheal Ayegbemi*, it was also held that because robbery on the roads and water in recent times has been on increase and disturbing, the parties to the robbery were sentenced to 20 years imprisonment.

Certain offences have been considered serious in the society such as sexual offences especially when it involves children as victims. In *R v. Ozuloke*,⁷ the appellant met a young girl aged 8 years on the road. He covered her eyes with his hand and stuffed bread into her mouth to stop her crying out and took her into a bush, laid her on the ground, stood over her and poured acid over her body and cut off her left ear, he forced her eyes open and pored acid into them. He later ran away leaving the little girl unconscious. A twenty year jail sentence was considered adequate, the offence being regarded as most revolting. Thus the gravity and the rampancy of the offence may be considered together by the court and if found grievous, the court may impose a heavier punishment.

5. Statutory limitation: statutory limitation as to time in Nigeria, mostly applies to civil cases. The criminal statute of limitation is a law that prohibits prosecutors from charging a person with crime after a certain time has passed. This is to prevent the presentation of deteriorated evidence to the court an example is the limitation on defilement that an action on such offence must be brought within two months after the commission of the offence and the accused cannot be convicted upon the uncorroborated testimony of one witness⁸. However, in criminal law, there are statutory limitations as to the exercise of the courts discretion in sentencing. The criminal and penal codes as well as other statutes creating offences which are enforced in Nigeria usually specify the nature and quantum of sentences and these specifications may and may not leave room for judicial discretion. In effect, sentence can only be imposed in the manner prescribed by the law after the establishment of proof of committing an offence beyond reasonable doubt.

⁷ (1965) NMLR 125

⁸ Section 218 & 221(2) Criminal Code

A judge must not exceed the term prescribed in the statute creating an offence nor must he exceed the quantum prescribed in punishing the offender. Certain sentences are made mandatory by the law, leaving no discretion to the judge, in such case the judge is not allowed to exceed the prescribed sentence on the convict nor should he mete out a lesser sentence than that prescribed. For example, the punishment for the offence of murder as prescribed by section 319 CC is death, the judge is not allowed to exempt the convict except of course in cases prescribed by the law. Two sets of persons are exempted from death penalty as per section 368(2) (3) of the Criminal Procedure Act, pregnant women, who should be sentenced to life imprisonment instead and persons under the age of 17. In other cases, where the law prescribes a maximum or minimum punishment, the court at its discretion may impose a sentence with the limit set by the relevant statute.

6. Concurrency of the sentence: in some situations, accused persons may be charged and convicted for more than one offence. It is the responsibility of the court to determine how the sentence would run for the convict. Sentences may run consecutively or concurrently
 - a. Consecutive sentences: where the defendant is found guilty of more than one crime and the terms for several crimes are served one after the other.
 - b. Concurrent sentences: where the defendant is found guilty for more than one crime and serves the terms at the same time and only lasts as long as the longest term imposed.

The general rule is that when the court finds an accused person guilty of more than one offence, the sentences should run concurrently. The Supreme Court upheld this rule by stating “whenever the offences are of similar disposition, the sentences should run concurrently”. In *Nwafor v. the state*, where the accused was found guilty of and sentenced for store breaking and possession of breaking implement in the same transaction, the Supreme Court held the sentence should run concurrently since the offences were committed in the same transaction. Also, where separate offences are charged together, each must receive a separate sentence but if they all form part of the same criminal action, sentences will be concurrent.

Nevertheless, implementing the above guidelines in sentencing the accused Mr Evans, will aid the court in imposing a just and reasonable sentence while taking into consideration the aims of sentencing, bearing in mind the effect of the penalty both on the offender and the community and whether the sentence is likely to have the desired effect. The nature of the offences committed by the accused are all serious offences and all fall under the category of felonies since they are punishable with imprisonment of above 3years. Due to the grievous nature of these offences, it is clear that the accused should be made to feel the weight of the sword of justice by being imposed with the maximum punishments prescribed for the offences since the accused was bold enough to commit not just one or two felonies. Also, the nature of the offender cannot even be used to help plead his case as he is widely known as a ‘notorious kidnap kingpin and armed robber’ and has publicly been involved in assaults, rape and even defilement of young girls. Such atrocities! committed by a single man. In the eyes of the court, the character of the accused is quite terrible and will serve as an aggravating factor of his sentence. It is also clear from the previous

records of the accused, public opinion of him as a kidnap kingpin and the character of the accused that even though he was not alone in the commission of the offence, he was obviously the moving force and instigator of the crimes and thus as a principal offender, punishment imposed on him should be more severe and grave.

Furthermore, despite the fact that he was the major perpetrator of those offences in the society, his actions encouraged others to involve themselves in such crimes resulting in the rampancy of the offence. The court will see his sentencing as an opportunity to send a message to other offenders, showing them the grievousness of their offence and the consequences of their actions in an effort to stamp out those offences just like it did in *State v. Micheal Ayegbemi*⁹. Aside from the provision of the law on the penalty for the crimes, the only limitation will be that of the offence of defilement which states that a prosecution for the offence must begin within two months after the offence is committed and a person cannot be convicted of such an offence upon the uncorroborated testimony of one witness¹⁰. In consideration of the other sentencing guidelines, the court may order the sentences to be served consecutively. This is because not only are the offences grievous felonies, but they were not all committed in one single criminal act neither were they committed once or twice but numerous times over the years. However, since the punishment for rape is life imprisonment, whether the sentence runs concurrently or consecutively, it won't affect his prison term for life.

Conclusively, in accordance with the guidelines prescribed by the Supreme Court and in the exercise of the jurisdiction and discretion of the court, the punishment to be imposed on the offender must be severe and as grave as the crimes committed while taking into consideration both the society and the offender himself. In some situations, offenders present themselves as persons who do not deserve any pity by not being repentant for their crimes thus the decision of the court will be affected by such aggravating factors leading to severe sentences. It must however be noted that sentences must not be passed out of anger or pity by the judge but rather with the aim of dispensing justice in its full capacity as earned by the offender.

REFERENCES

- Oxford Advanced Learners dictionary
- Chukkol. K, *The Law of Crimes in Nigeria*, Zaria; Ahmadu Bello University Press ltd, 1988.
- Udosen, J.I, Nkokom, E.U, *Sentencing and the Administration of Criminal Justice in Nigeria*, Donnish Journal of law, 2018.
- O, H.O, *Sentencing: Practice and Procedure under the Administration of Criminal Justice Act and Criminal Justice Law*.

⁹ supra

¹⁰ Sections 218 & 221(2) Criminal Code

- Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016.