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CRIMINOLOGY II

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After a criminal defendant is convicted or pleads guilty, a 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 upon factors specific to the crime and the defendant. A sentence may include fines, incarceration, probation, suspended sentence, restitution, community service, and participation in rehabilitation programs.

Sentencing guidelines are the standards for determining the punishment that a person convicted of a crime should receive, based on the nature of the crime and the offender's criminal history. It is the set of rules and principles a trial court judge follows to decide about the sentence to be given to a defendant who is found guilty.

Sentencing guidelines are designed to indicate to judges the expected sanction for particular types of offenses. They are intended to limit the sentencing discretion of judges and to reduce disparity among sentences given for similar offenses. Although statutes provide a variety of sentencing options for particular crimes, guidelines attempt to direct the Judge to more specific actions that could be taken.

The essence of sentencing guidelines is to;

1. Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
2. Promote respect for the law by providing punishment which is just;
3. Ensure that the punishment imposed on any offender is commensurate with the punishment imposed on others committing similar offenses;
4. Protect the public;
5. Offer the offender an opportunity to improve him or herself;
6. Make frugal use of the state's and local governments' resources; and
7. Reduce the risk of re-offending by offenders in the community.

The sentencing guidelines system is designed to ensure that offenders who commit similar crimes and have similar criminal histories receive equivalent sentences.

The Supreme Court in Nigeria has laid down 6 basic guidelines to aid courts in reaching a reasonable, just and fair sentence when it comes to sentencing. They are as follows;

1. **The nature of the offense** : This simply put means the type of crime or offense that was committed by the person who has been found guilty. As a principle of law and practice, the nature of offense committed by an accused person goes a long way in dictating or determining the extent of his punishment. The law makes it clear that a person can not be convicted or sentenced for any act that does not constitute crime in any written law.

In the case of *Adesanya v The Queen*, the case of forgery, the principle was established that only in exceptional cases can a fine be sufficient or appropriate punishment for forgery of court processes. The seriousness of the offense, the nature, the gravity makes forgery of court processes grievous.

Different crimes have different punishments or sanctions as provided for in different statutes. For example, in cases of manslaughter I.e unintended homicide giving auto mobile accidents as an example, there is a tendency of the court to impose slight sentences as opposed to murder.

2. **Character/ nature of the offender**: As a principle of law and rule of evidence, the character of the offender is inadmissible in law. However, when the character of the accused person is in question to the nature of the offense, it becomes admissible.

In *Adeleye v the state*, the appellants bad character was significant in the restoration of heavier punishment on them. In *R v State*, the fact that the appellant has been previously convicted for defilement this made the court to increase the sentence from 18 months to 5 years imprisonment with hard labor. If the accused has a bad reputation for committing crimes and has previously had a registered criminal record or records, it is likely that the judge will put that into consideration while determining the sentence to be imposed on the accused.

3. **The position of the offender among his confederates**: At early common law, parties to crime were divided into four categories. A principal in the first degree actually committed the crime. A principal in the second degree was present at the scene of the crime and assisted in its commission. An accessory before the fact was not present at the scene of the crime, but helped prepare for its commission. An accessory after the fact helped a party to the crime after its commission by providing comfort, aid, and assistance in escaping or avoiding arrest and prosecution or conviction.

When a crime is committed with the help of two or more parties, the roles played by the different parties when the crime was committed is also a determinant factor in passing a sentence. Some of the parties involved can be said to have played a minor role as opposed to other parties who may have played a major role in committing the crime. For example, in a case of armed robbery, the person responsible for planning or making a blueprint for the execution of the robbery may get a different/ lesser punishment than that of the executors who will be playing the major role.

In *Enaoro v The Queen* where the defendant was initially sentenced to 15 years imprisonment by the high court but appealed to the Supreme Court and who then reduced his sentence to 5 years and said “the sentence imposed on the lieutenant should never be more than the leader”. While in *Queen v Mohammed & ors.*, while the first appellant who was the leader was given a maximum sentence of 8 years imprisonment, the others were given a maximum sentence of 5 years imprisonment.

4. **The rampancy of the offense:** where an offense is rampant or prevalent, the court will take it seriously because of its rampancy. The court will give heavy punishment so that it will be a lesson to the public not to do the same offense (act of deterrence). Examples: Drug offenses,, stealing, kidnapping, armed robbery. In *R v Hassan & Owolabi*, the accused person was sentenced to 5 years for forgery and another 5 years for stealing by the high court. He appealed and the Supreme Court expressed its view this “fraud on the customs are shockingly prevalent and forgery of commercial documents strikes at the root of all credits , we are not disposed to reduce the sentence by one day”.
5. **Statutory limitations:** A statute of limitations is a law that sets the maximum time the parties involved have to initiate legal proceedings from the date of an alleged offense, whether civil or criminal. However, the length of time the statute allows for a victim to bring legal action against the suspected wrong-doer can vary from one jurisdiction to another. Criminal offenses can also have statutes of limitations. However, cases involving serious crimes, like murder,, sex offenses involving minors, or violent crimes like kidnapping or arson, have no statute of limitations.

Under international law, crimes against humanity, war crimes, and genocide have no statute of limitations. In Nigeria, there are two types of statutory limitations ; **Statutory maximum and magisterial jurisdiction** limitation. In *Aremu v JGP*, the magistrate court sentenced the accused persons 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 has imposed because of the statute of limitations.

6. **Concurrency of the sentence:** There are laws governing concurrent and consecutive sentences. When a person is charged and found guilty of more than two offenses. When sentences run concurrently, defendants serve all the sentences at the same time. When sentences run consecutively, defendants have to finish serving the sentence for one offense before they start serving the sentence for any other offense. The general rule is that when the court finds an accused person guilty of more than one offense, the sentences should run concurrently. In *Nwankwo. v The State*, the accused person was found guilty and sentenced for store breaking and possession of the instrument used to perpetuate the crime, the Supreme Court held that the sentence should run concurrently because they were crimes that emanated from the one crime.

The guidelines as mentioned and explained above are the main determining factors to consider before a judge passes a sentence. These guidelines aid in arriving at a just and appropriate sentencing for any person who has been found guilty of a crime.