

NAME: ERINMWIONGHAE ETINOSA ADANNA.

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LECTURER: MR S. FABAMISE, MR F.A. BANKOLE, MISS VERA.

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ASSIGNMENT: SENTENCING.

What is a Sentence?

A sentence is defined as a definite order pronounced by a court of competent jurisdiction at the end of a criminal trial after the finding of guilt. It can also be defined as punishment by the court or jury within range of punishment authorized by statute. There are two types of sentencing, Concurrent sentence which is where one is sentenced for more than one crime which are to be served at the same time rather than one after the other and Consecutive sentence where one is sentenced for different crimes and the sentences have to be served one after another.

Sentencing is a post-conviction process of ascertaining and imposing penalties on offenders, it is the final stage of the trial process when the Court has found the defendant guilty or defendant has pleaded guilty, the Judge then decides on sentence appropriate for offence established.

The Supreme Court has a set of laid down rules, principles, guidelines to aid court in reaching a reasonable, just and fair sentence. These are divided into 6 :

1. Nature of the Offence.
2. Character\ Nature of Offender.
3. Position of Offender amongst its Confederates.
4. Rampancy of the Offence.
5. Statutory Limitation.
6. Con-currency of the Sentence.

The following will serve as a guide to sentencing Evans in the following way as explained;

1. Nature of the Offence:

As a principle of law a person cannot be found guilty of an offence which was at the time of it being committed doesn't constitute a crime in any written law and its punishment not clearly stated. Just as felonies have punishments of 3 years jail term or more or death

sentence and misdemeanor have punishment of not less than 6 months but less than 3 years imprisonment one can't be punished for a misdemeanor with jail term more than 3 years. Judges however have discretion to sentence a person for stipulated 3 years or less than that. In the case of Evans who has been charged with assault, rape, defilement of young girls, kidnapping, armed robbery, ritual killing, obtaining property by false pretense, where all offences have already been stated out by law with their various punishment he could easily undergo trial and sentenced in accordance with the law, precisely the criminal code. For example, the offence of kidnapping according to the criminal code is a felony and provides punishment of imprisonment of ten years by **SEC 364CC**.

In **Adeyeye & Others v State** a case of armed robbery, trailed by High Court of Western State, the court imposed a sentence of 18years imprisonment on the accused. On appeal to Appeal Court, the sentence was reduced to 10yrs, the accused unsatisfied with the decision of Appeal Court appealed to Supreme Court, the Supreme Court reinstated the 18years with 3 strokes of cane, stating the sentence was too lenient because of the seriousness of the offence.

2. Character\ Nature of Offender:

As a principle of evidence, character evidence that is evidence about a person's reputation in society is inadmissible in law, however when character of accused is in question, evidence of character becomes admissible. Questions may arise in court as to whether Evans is a philanthropist within his society and also questions as to if he has any old criminal records which may put him in good or bad sights of the law. Although this principle is hardly considered, it gives the Judges insight into persons on trial. Evans is seen as a notorious kidnap kingpin and armed robber in society this gives him an appearance as one who cannot be left freely in society as he may have bad effect on others.

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

3. Position of Offender amongst its Confederates:

When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence may be charged with actually committing it. Where one person out of all is however seen to be the principal offender, master mind he or she is likely to get stiffer punishment or higher sentence.

Evans could be said to have played a major role whether he commits the act himself or procures another to commit such act.

- a. When Offender plays a Minor Role: In the case of **Enaoro v Queen** a case of treasonable felony the accused was sentenced to 15 years imprisonment by the High Court. The Supreme Court reduced sentence to 5 years and said sentence imposed on lieutenant should never be more than that imposed on the leader. Affirming those who instigate should get more punishment than those who instigated.
- b. Playing a Major Role: One who plays a major role in a crime is usually punished more than those who play minor role to such crime. In the case of Evans, he plays a major role, thus he should feel much more severity of the punishment rather than his other allies who may play little or no role in commission of the crime. Major role means he planned or may have procured other persons to commit such act, he may also have committed such acts himself without procurement.

In **State v Kerenku** although the appellant was not the leader the court was of the view that such person played a lead role in the incident and must take that into consideration.

4. Rampancy of the Offence:

Where a crime is rampant or prevalent courts have considered severity of sentence to aid stamping out crime. Rampancy of the offence can serve as a mitigating or aggravating factor

depending on the offence. Certain offences are considered serious in nature such as sexual offences, armed robbery; where a crime is considered rampant and grievous the court is most likely to give severe punishment to stamp out such behaviors from society, to serve as deterrence.

In application in relation to Evans who has committed offences recognized by society as being significantly grievous, it would serve as an aggravating factor leading to higher possibility of him being sentenced in maximum of each punishment.

5. Statutory Limitation:

These are laws which set out the time limits within which a court action must take place. Essence of limitation law is to ensure all claims are diligently and promptly presented while evidence in support of claim is still available and witnesses memory still fresh, this ensures finality in litigation. In criminal law, there are no statutory limitations, thus Evans crime may be charged which ever time after commission of such act unlike under tortious acts.

CONCLUSION

In consideration of the six guidelines given by the Supreme Court in sentencing an individual guilty of a crime, it could be said that Evans having a major role in commission of the crime, not having a good reputation within society and with rampancy of the crime which he has committed should be punished in accordance with law as the following guidelines have not mitigated but aggregated his punishment or sentence. Guidelines given by Supreme Court help decide whether or not one could be punished treated or whether a person who commits a crime could be subject to reformation.