

Adele Chinonso Sheriff

17/law01/014

Criminology (LPI 304)

In all criminal trials, where a conviction is secured, the next logical step would be sentencing. Sentencing is a very broad field accommodating different approaches and ideas. It is an exercise of a discretionary power that is little guided in a country such as Nigeria. Hence the power presents sentences with a very wide playing field and accommodates individual inclinations and approaches or solutions to the same problem.

The criminal justice system in Nigeria starts to run with the commission of a crime and continues with subsequent interventions by agencies of the system with the arrest, arraignment, trial, sentencing and punishment of the offender. A criminal trial involves two processes both of which are important to the society and the offender. Firstly, there is the process of determining whether the defendant/accused did the act or made the omission alleged against him; if he did, then the second leg is that of sentencing him for his wrongdoing. In some legislation, the words sentence and judgments are used as if they were synonymous.

However in actual fact, the use of the word judgment is of a wider scope than the word sentence. In simple legal parlance therefore, the word “sentence is an order which is definite in its nature, type and quantum, whether it is made mandatory by law or it is fixed by the court or tribunal at its discretion (made at the conclusion of a criminal trial consequent upon finding of guilt).

A sentence of the court can be defined as a definite disposition order issued by a court or other

competent tribunal against a person standing trial at the conclusion of a criminal trial. This is subsequent to the finding of guilt against him and must be an order which is definite in its nature, type and quantum. The Nigerian Criminal Code and the Penal Code as well as other offence-creating statutes specify the quantum of sentences, while the sentences themselves find their legitimacy in the criminal Procedure legislations applicable at the states and federal levels.

So having found Evans guilty of all charges levelled against him, he will be sentenced accordingly using the guidelines laid down by the supreme court in order to ensure reasonable, just and fair judgement

These guidelines include:

1. Nature of the offense
2. Character/nature of the offender
3. The position of the offender among his confederates
4. The rampancy of the offense
5. Statutory limitations
6. Concurrency of the sentence

Nature of the offense

Certain offences have been considered as serious in nature, for instance, offences such as armed robbery, arson, murder, kidnapping or sexual offences especially when they involve children as victims. In the American case of *Gregge v. Georgia*, the Supreme Court of America went on to uphold death penalty as an appropriate sentence for the offence of murder due to the nature of the offence. Also, in the Nigerian case of *State v. Osoelika and 7 ors*, a case of kidnapping and abduction at Enugu, the presiding Judge refused bail application due to prevalent and serious

nature of kidnapping in Enugu and particularly South East zone of Nigeria, despite the fact that the said offence could be bailable. Similarly, Courts have taken a very serious view of the offence of assault with intent to maim or disfigure.

Thus, in *R. V. OZULOKE* the Appellant met a little girl aged about eight years who was related to him on a village 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 on her and poured acid over her body and cut off her left ear he forced her eyes open and poured 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.

Similarly, in the case of *R v. Manson*, the convict was sentenced for life imprisonment for raping a small girl under his care with such violence as to cause the tearing of the vaginal wall extending into the urethra and soft tissues of the pelvis, which later led to the death of the small girl after much bleeding. The court while sentencing the convict stated thus: It is difficult to imagine a worst case of manslaughter and the only punishment to be imposed is that of imprisonment with hard labour for life.

Character/nature of the offender

As a principle of law and a rule of evidence (or vice versa) evidence of character is inadmissible in law. However, when the character of the accused person is in question the nature/evidence of his character becomes admissible in law.

In *Adeyeye v. The state*, supra part of the reasons advanced for the reinstatement of the earlier penalty (18years), was that the accused person had been convicted earlier of an offence. It would appear that the court worked on the assumption that anyone with a previous conviction has lost out in terms of mitigating his sentence. Also in *Adeleye v. Ajibade*, the appellants bad character

was significant in the restoration of a heavier punishment on them. In *R v. State*, the fact that the appellant had previously been convicted for defilement led the court to increase his punishment from 18 months to 5 years imprisonment with hard labour.

Two aspects of the age factor have gained the attention of the Nigerian law and practice. These are youth between 7 to 14 years of age. Generally, a person under 7 years is not criminally responsible 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 omission. In the case of *State v. Nwabueze* the court held that children are not normally kept in prison custody but in remand homes upon conviction and at the pleasure of the Governor. A person under the age of 17 years in Nigeria shall not be sentenced to death if found guilty of a capital offence.

Furthermore, a young person shall not be imprisoned if he can be suitably dealt with in a less serious way. Age, therefore, is a very serious factor in sentencing and could influence the mind of the sentencing Judge in various ways. In the case of *State v. Obagha*, the defendant aged 70 years, was convicted of manslaughter due to provocation; the court greatly considered his age and sentence him to 3 years imprisonment without hard labour. In the case of *State v.*

Olowolaiyemo, the defendant who was a hunter mistakenly shot and killed his victim who was on top of a palm tree taking him for a monkey. Court greatly considered his age of about 70 years and poor health and sentenced him to 12 months imprisonment or fine of 200 pounds for the offence of manslaughter.

The position of the offender among his confederates

When the offender plays a minor role

In *Enahoro v. Queen*, a case of treasonable felony Enahoro was sentenced to 15 years

imprisonment by the high court. The supreme court reduced the sentence to 5 years and said the sentence imposed on the lieutenant should not be more than the leader. The 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.

When the offender plays a major role

The offender who has played a major role in commission of a crime is usually visited with a more severe punishment than those inflicted on minor participants. This was given clear judicial recognition in the case of *Queen v. Muhammed and ors*, while the first appellant who was the leader was given a maximum sentence of 8 years of imprisonment, the other parties were given a maximum sentence of 6 years imprisonment.

The rampancy of the offence

Where an offence is rampant or prevalent, courts have always thought that severity of punishment imposed will aid in scrapping out the crime. *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 and the supreme court expressed its view thus "fraud on the customs are shockingly prevalent and forgery of the commercial documents strikes at the root of all credits, we are not disposed to reduce the sentence by one day".

Statutory limitations

There are two types of statutory limitations in Nigeria

1. Statutory maximum
2. Magisterial jurisdiction limitation

In essence, whenever a statute itself stipulates a term of imprisonment no court should exceed its limit. In *queen v eyo and ors*, a case of unlawful assembly. The high court sentenced them to 5

years imprisonment on appeal to the supreme court, the supreme court reduced it to 3 years because that was the maximum sentence stipulated by law.

Concurrency of the sentence

When a person is charged and found guilty of more than 2 offences in Nigeria, 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 similar in nature/disposition, they should run concurrently.