

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON WENESDAY THE 14TH DAY OF SEPTEMBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CR/070/2022

MOTION NO.: M/10196/2022

BETWEEN:

COMMISSIONER OF POLICE ----- } PROSECUTION

AND

AKUWNE OKEOMA ----- } DEFENDANT

BENCH JUDGMENT

In this Post Judgment Proceeding, the Court had been asked to revisit and review its Sentence pronounced on the 27th day of June, 2022 in which the Applicant was sentenced to Thirty Five (35) years imprisonment. The crime was based on allegation that the Convict was caught poking his finger into the private part of a minor. He was arrested and spent some months in the Police custody before he was brought to this Court. Upon arraignment, he pleaded guilty to the offence and was convicted instantly according to the law – ACJA 2015.

He had since the 27th day of June, 2022 been in Prison custody serving the terms.

But on the 30th of August, 2022 he, through his Counsel – Orji E.S. filed a Motion for the review of the Judgment and the Sentence. To the Applicant, there is need to review the Sentence which they believe was like using a sledge hammer to kill an ant.

The Prosecution was served. They did not file any Counter Affidavit to the Motion which is from all indication a Post Judgment Proceeding. They were served on the 9th of September, 2022. It is the law that unchallenged facts are deemed admitted.

Today, the Court had heard from five (5) Amici. Three (3) Amici said that Court has no right to review Sentence while two (2) said that the Court can review Sentence since Sentence stands as and in the category of Bail. That since the Court can review Bail condition or even revisit Bail application not granted, that it can review Sentence and that review of Sentence is not review of the Judgment of the Court. That the Judgment of the Court is Conviction. That the Sentence is an application of its own which can be reviewed based on the Court exercising its discretion.

This Court has no intention to review its Judgment already delivered which has convicted the Applicant who had pleaded guilty to the offence. What this Court is doing in this application is to review as prayed the Sentence of Thirty Five (35) years imprisonment placed on the Convict.

It is imperative to state that the whole essence of sentencing to serve term is for correctional measures. To make the Convict to correct his/her ways and not necessarily as punitive per se. In that case, the Court sentences a Convict so that after serving term, the Convict will amend or see reason to amend his/her way. If the intendment of the drafters is strictly punitive, then every Convict will serve the maximum term prescribed by law.

Again, this Court believes, as Ikeogwe Esq. submitted that review of Sentence application is in the same category and ought to be in the same category with the application for review of Bail condition which this Court believes is a pseudo Sentence as it were.

A closer look at the circumstance of the crime in issue and the Thirty Five (35) years Sentence coupled with the fact that the Convict pleaded guilty to the offence, it puts no one in doubt that the Sentence ought to be reviewed even with or without any application.

Yes, the maximum Sentence provided by the law Violence against Person is Life Imprisonment but sentencing someone to Thirty Five (35) years imprisonment, can it be said that it is correctional? I humbly do not think so.

Again, can it be said that Sentences should not be reviewed when Bail condition and Ruling can be reviewed and even the Applicant have right to reapply for Bail? Yes, the Applicant is not a Convict yet but the

whole essence of such application is for the interest of justice.

Most importantly, a Convict has the discretion to suspend its sentencing and even conviction pending outcome of Appeal. If that is allowed and applicable, this Court feels that, in the interest of justice and its proper dispensation, a Court can, by putting on the cloak of correction of its Judgment, review the Sentence and **NOT** the conviction. In that case, the Convict is still a Convict. But Court has right to review the Sentence. It should have been a different case if the Court goes on to revisit or review the conviction it has pronounced.

This Court having read through the facts in support of this application and the circumstances surrounding the case, it is the humble view of this Court that it ought to review the Sentence as sought in prayer No. 2 and not the conviction or Judgment as sought in prayer No. 1.

Having gone through all the circumstances and the facts in the Affidavit as well as the argument in the Written Address, **this Court hereby grants the prayer No. 2** and hereby reviews and revisits the Sentence which was made in error and therefore a nullity.

Based on that, the Court hereby vacates the Thirty Five (35) years Sentence and hereby Sentences the said Convict – Akuwne Okeoma to Four (4) months imprisonment starting from the day he was convicted – 27th June, 2022. This is based on the fact that the Convict had stayed Eight (8) months in Police custody

before he was arraigned on the 27th day of June, 2022 when he was convicted.

If by the calculation of the Prison calendar, he has spent up to that period in Prison, he should be set free here and now. Otherwise he should go back and complete the Sentence.

The previous Sentence is hereby vacated.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2022 by me.

K.N. OGBONNAYA
HON. JUDGE