IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE CALABAR JUDICIAL DIVISION
HOLDEN AT CALABAR
ON TUESDAY THE 26TH DAY OF MARCH, 2019
BEFORE HIS LORDSHIP, HON. JUSTICE S. A. AMOBEDA
JUDGE

CHARGE NO: FHC/CA/12C/2019

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA } **--- COMPLAINANT**

AND

DAVID OKPRE } **--- DEFENDANT**

JUDGMENT

The defendant was arraigned before this court on a one count Charge dated the 15/3/2019 and filed on the 19/3/2019 for the offence of Computer Phishing by using emails to obtain confidential information in an attempt to use that information for criminal purposes contrary to **Section 27 of the Cyber Crimes Act, 2015,** and punishable under section 32 of the same Act.

The Charge having being read to the Defendant and the defendant having pleaded guilty to the charge, the Defendant is hereby convicted as charged.

Before this Court is a Plea Bargain agreement filed on the 19/3/2019 and executed by both parties and in line with **Section 270 of the Administration of Criminal Justice Act, 2015**. On the plea bargain, it was agreed that the defendant shall forfeit to the Federal Government of Nigeria the HP Laptop used in the commission of the offence and that imprisonment for a term of six months or alternatively an option of fine to be determined by this Court, be given as punishment against the Convict

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By way of allocutus, Counsel to the Convict relied on **Section 270(4)(b)(3)** of the **Administration of Criminal Justice Act, 2015 (ACJA)** and prayed this court to tamper justice with mercy and that the Convict is a first offender.

The attention of the court was drawn to a plea bargain agreement dated 19/3/2019 and filed the same date in the court registry in which the Convict admitted committing the offence which he was charged and convicted.

After the presentation by the Prosecution and pursuant to **section 270 (4) of ACJA 2015**, an inquiry from the Defendant whether his plea of guilty is as to the fact stated by the Prosecution. The Defendant answered in the affirmative that he fully understood the fact and the ingredient of the offences and stood by his plea of guilty. I also inquired again from the Defendant further to the same provision of **section 270 (4) of ACJA, 2015**, whether he entered into the plea bargain agreement voluntarily and without undue influence, and he answered in the affirmative that he entered into the plea bargain agreement freely, voluntarily and was not unduly influenced by the Prosecution (EFCC) or indeed anybody.

Learned counsel to the Convict similarly affirmed that his client understood the charge and that he was part of the plea bargain which he duly signed.

Am in no doubt therefore that the Defendant fully understood the charge, the terms of the plea bargaining agreement, he freely entered into with the Prosecution and his plea of guilty was unequivocal.

In the circumstances, the duty of the court is circumscribed by the clear provision of **Section 356 (2) of ACJA, 2015**.

I hereby accordingly find and pronounce the Defendant guilty on the one (1) count charge and convict him as charged.

The Court cannot therefore impose a higher punishment than that prescribed for the offence neither can a Court impose a sentence which the

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statue creating the offense has not provided for. See the case of **Ekpo v. State (1982) 1 NCR 137.**

The attitude of Courts when it comes to sentencing is basically that it must be a rational exercise with certain specific objective. It could be retribution, deterrence, reformation etc in the hope that the type of sanction chosen will but the particular objection chosen however roughly, unto effect. The sentencing objective to be applied and therefore the type of punishment may vary depending on the need of a particular case.

In discharging this no doubt difficult exercise, the Court has to decide first on which from the above principle or objective applied better to the fact of a caused and their the quantum of punishment that it will accord with it.

In this case, if the objective is for the deterrent and the reformation of the convict, then the maximum punishment for the Convict as provided for in the Act appeared to me particularly excessive in the light of the facts of this case alluded to by counsel on both sides of the aisle.

In the same vein, it is a notorious fact that crimes of this nature appeared now to be prevalent in our clime and the Court as preventive tools in the criminal justice system must not be seen to encourage crime of this nature by giving light sentences. The court therefore here, must engage in some tight balancing act.

(1) To be considerate and fair in enforcing clear provisions of the law.

(2) To be fair to the Convict where though pertinent as in this case is displayed.

I have considered all these factors particularly the fact that the Convict is a first offender and who has exhibited sincere penitence in the circumstances rather than insist on his inalienable right to a trial, he pleaded guilty thereby saving tax payer's resources and time of court. This attitude must have played a part obviously in the Prosecution agreeing to the plea bargain agreement dated 19/3/19.

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Having considered all these parts, I am inclined to the view that a lighter sentence appears to me desirable and appropriate in this case and will fully achieve noble goals of deterrence and reforming the Convict towards a precinct part of a moral rectitude.

The charge before this Court is brought pursuant to **Section 46 (a) of Cyber Crimes (Prohibition prevention etc) Act 2015**; which the convict was charged and convicted; provides punishment to a term of Imprisonment of 2 years or to a fine not more than ₦500,000.00 (Five Hundred thousand Naira) or both. In the extant situation, since the plea bargain agreement in place provides that the convict is sentenced to a six months imprisonment and option of fine of the amount to be fixed at the discretion of the Court and which can probably and legal be situated within the range of punishment under section 46(b) of the Act. I do not consider that the offence require a heavy sentence.

I do hereby sentence the convict to Six months imprisonment with an option of fine of ₦100,000.00 (One hundred thousand Naira). That the defendant shall forfeit to the Federal Republic of Nigeria a HP Laptop being the instrument used in the commission of the offence which was recovered from the said investigation.

That shall be the Judgment of this court.

Hon. S.A Amobeda
Presiding Judge

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Appearances:

1. **Usman Shehu, Esq.** ----- for the Prosecution
2. **C.N. Nweke, Esq.** ----- for the Defendant

CTC of Court Judgment — ₦200.00

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