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

CHARGE NO: FHC/CA/48C/2019

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA } **COMPLAINANT**

AND

ONORIODE JOEL AKPOJIVI
(LEO SIM) } **DEFENDANT**

JUDGMENT

On the 26th day of June, 2019, the Defendant was arraigned before this Court on a one (1) Count Charge dated 7/6/2019 and filed on the same date for the offence of unlawfully producing for use, and distributing a computer program (fake online link platform) designed for the purpose of electronically defrauding unsuspecting persons and thereby committed an offence contrary to Section 28 (1) (a) of the CyberCrimes (Prohibition, Prevention Etc.) Act, 2015 and punishable under Section 28 (1) (c) of the same Act.

The Defendant having understood the charge read to him in English language, Pleaded guilty to the charge.

The Prosecution thereafter urged this Court to convict the Defendant in view of his plea of guilty. He continued by stating that parties had entered into a plea bargain agreement dated 19/6/2019 and filed 20/6/2019, duly executed by the Prosecution on one hand and the Defence Counsel and the Defendant on the other hand. Counsel on both sides then adopted same as their agreement.

On the Plea bargain agreement,it is agreed that:

1. That the Defendant shall plead guilty to the offence with which he is charged on the charge.

2. That a term of six (6) months imprisonment with an option of fine fixed at the discretion of the Court.
3. That the Defendant shall forfeit to the Federal Government of Nigeria, the following:
   (a) ACURA ZDX WITH REG. No. SMK 245 DQ (LAGOS)
   (b) RANGE ROVER ENVOGUE WITH REG No. FST 772 EQ (LAGOS)
   (c) MERCEDES BENZ E 300 WITH REG No. LSD 393 EG (LAGOS)
   (d) SEVEN BEDROOM DUPLEX SITUATED AT VICTORY WAY EXTENSION, SATELLITE TOWN, CALABAR, CROSS RIVER STATE.

   All recovered by the Complainant in the course of investigation.

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.

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

Accordingly, upon the plea of guilty of the Defendant, the Defendant is hereby convicted as charged.

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.

By way of allocutus, Counsel to the Convict prayed this Court to temper justice with mercy as the Convict has shown remorseand is a first time offender.

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

The Court cannot therefore impose a higher punishment than that prescribed for the offence neither can a Court impose a sentence which the Statute 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 put the particular objective 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 cause and the quantum of punishment that it will accord with it.

In this case, if the objectiveis for deterrence 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 sometight 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 isdisplayed.

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 taxpayer's resources and time of court. This attitude must have played a part obviously in the Prosecution agreeing to the plea bargain agreement dated 19/6/2019.

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 upon whichthe convict was chargedis brought pursuant to **Section 28 (1) (b) of the Cyber Crimes (Prohibition, Prevention Etc) Act, 2015**; which provides punishment to a term of imprisonment of three (3) years or to a fine not more than ₦7,000,000.00 (Seven Million 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 28 of the Act. I do not consider that the offence requires a heavy sentence.

I do hereby sentence the convict to Six months imprisonment with an option of fine of ₦500,000.00 (Five Hundred Thousand Naira). The Convict shall forfeit to the Federal government of Nigeria, the items recovered in course of investigation which are:

(a) ACURA ZDX WITH REG. No. SMK 245 DQ (LAGOS)
(b) RANGE ROVER ENVOGUE WITH REG No. FST 772 EQ (LAGOS)
(c) MERCEDES BENZ E 300 WITH REG No. LSD 393 EG (LAGOS)
(d) SEVEN BEDROOM DUPLEX SITUATED AT VICTORY WAY EXTENSION, SATELLITE TOWN, CALABAR, CROSS RIVER STATE.

HON. JUSTICE S.A. AMOBEDA
Presiding Judge
28/6/2019

Appearances:

1. **A.S.Abuh (Mrs)** with **Usman Shehu, Esq. --** for the Prosecution
2. **David Akpanofum, Esq.** **---** for the Defendant

Cert of Court Judgment — ₦200.00
21/03/2023