

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47480

|                       |                                  |
|-----------------------|----------------------------------|
| STATE OF IDAHO,       | )                                |
|                       | ) <b>Filed: May 15, 2020</b>     |
| Plaintiff-Respondent, | )                                |
|                       | ) <b>Karel A. Lehrman, Clerk</b> |
| v.                    | )                                |
|                       | ) <b>THIS IS AN UNPUBLISHED</b>  |
| RYAN ANTHONY TATARA,  | ) <b>OPINION AND SHALL NOT</b>   |
|                       | ) <b>BE CITED AS AUTHORITY</b>   |
| Defendant-Appellant.  | )                                |
| _____                 | )                                |

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Gerald F. Schroeder, District Judge.

Judgment of conviction and unified ten-year sentence with three-year determinate term for aggravated assault, with a persistent violator enhancement, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Maya P. Waldron, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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Before GRATTON, Judge; LORELLO, Judge;  
and BRAILSFORD, Judge

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PER CURIAM

Ryan Anthony Tatara was found guilty of aggravated assault, Idaho Code §§ 18-901(b), 18-905(a)(b); with a persistent violator enhancement, I.C. § 19-2514; petit theft, I.C. §§ 18-2403(1), 18-2407(2), 18-2409; battery, I.C. 18-903(a); possession of a controlled substance, I.C. § 37-2732(c); and possession of drug paraphernalia, I.C. § 37-2734A. The district court imposed concurrent, unified sentences of ten years with three years determinate for aggravated assault, with a persistent violator enhancement, and 240 days of jail time with credit for 240 days

of time served for each of the misdemeanors. Tataro appeals, contending that his sentence for aggravated assault with a persistent violator enhancement is excessive.<sup>1</sup>

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established and need not be repeated here. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion. Therefore, Tataro's judgment of conviction and sentence are affirmed.

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<sup>1</sup> Both at the sentencing hearing and in its judgment of conviction, the district court imposed a separate, concurrent sentence for the persistent violator enhancement under Idaho Code § 19-2514. That section, however, does not create a new crime. Rather, it permits the court to impose a greater sentence for the underlying conviction and is an enhancement of that sentence, not a separate sentence. *Lopez v. State*, 108 Idaho 394, 395, 700 P.2d 16, 17 (1985) ("Clearly, I.C. § 19-2514 does not create a new crime, but instead provides for the imposition of greater punishment for the underlying conviction."). "Sentencing enhancements thus provide for a single, more severe penalty, rather than for multiple penalties." *Olsen v. State*, 156 Idaho 922, 926, 332 P.3d 834, 838 (Ct. App. 2014). Although Tataro did not raise the issue on appeal, the district court erred by sentencing Tataro to a concurrent sentence for being a persistent violator. We conclude this error is harmless, however. At both the sentencing hearing and in its judgment of conviction, the court stated Tataro's sentence for aggravated assault of three years fixed with two years indeterminate was "to be enhanced" to a sentence of three years fixed with seven years indeterminate for being a persistent violator.