

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 47948/47949/48000

STATE OF IDAHO,)
) **Filed: April 13, 2021**
) **Plaintiff-Respondent,**)
) **Melanie Gagnepain, Clerk**
 v.)
) **THIS IS AN UNPUBLISHED**
) **ROBERT LOREN BATISTA,**) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
) **Defendant-Appellant.**)
)
)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Cassia and Minidoka Counties. Hon. Michael P. Tribe, District Judge.

Judgments of conviction and concurrent, unified sentences of six years with three years determinate for grand theft, five years with two years determinate for fleeing or attempting to elude an officer, and seven years with three years determinate for possession of a controlled substance, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Ben P. McGreevy, Deputy Appellate Public Defender, Boise, for appellant.

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

Before HUSKEY, Chief Judge; GRATTON, Judge;
and BRAILSFORD, Judge

PER CURIAM

In these cases, consolidated for appeal, Robert Loren Batista pled guilty to grand theft by receiving, possessing or disposing of stolen property, Idaho Code § 18-2403(4), in Docket No. 47948; fleeing or attempting to elude an officer, I.C. § 49-1404(2), in Docket No. 47949; and possession of a controlled substance, I.C. § 37-2732(c)(1), in Docket No. 48000. The district court imposed concurrent, unified sentences of six years with three years determinate in Docket No. 47948; five years with two years determinate in Docket No. 47949; and seven years

with three years determinate in Docket No. 48000. The district court retained jurisdiction in all three cases and subsequently entered orders of probation in all three cases. Batista appeals, contending that the district court abused its discretion when it imposed his concurrent sentences. In response, the State disputes that the district court abused its discretion and also argues that Batista's notice of appeal in Docket No. 48000 was untimely and, therefore, that appeal should be dismissed.

In support of this latter argument, the State relies on the requirement in Idaho Appellate Rule 14(a) that the defendant must file a notice of appeal forty-two days from the date of the entry of the judgment of conviction, and it notes Batista filed his notice of appeal on April 30, 2020--fifty-one days after the district court entered the judgment of conviction in Docket No. 48000 on March 10, 2020. In reply, Batista argues his notice was timely because the district court retained jurisdiction. In support, Batista relies on that portion of I.A.R. 14(a) which provides:

If, at the time of judgment, the district court retains jurisdiction pursuant to Idaho Code § 19-2601(4), *the length of time to file an appeal from the sentence contained in the criminal judgment shall be enlarged by the length of time between the entry of the judgment of conviction and the entry of the order relinquishing jurisdiction or placing the defendant on probation.*

(Emphasis added.) Implicit in Batista's argument is that his April 30, 2020, notice of appeal was premature but became valid once the district court entered the order placing him on probation on November 30, 2020. *See* I.A.R. 17(e)(2) (providing premature notice becomes valid upon filing of appealable judgment or order without refiling notice). We agree that Batista's notice in Docket No. 48000 was timely and address the merits of that appeal.

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 a 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, Batista's judgments of conviction and sentences are affirmed.