

Appellant/Defendant Paul Kinnaman appeals the sentence imposed by the trial court following his admission to violating his probation. We affirm.

FACTS AND PROCEDURAL HISTORY

In March of 2004, Kinnaman was convicted, pursuant to a plea agreement, of Class B felony robbery, Class C felony resisting law enforcement, Class C felony carrying a handgun without a license, and Class D felony auto theft. The trial court sentenced him to an aggregate term of fifteen years, three years of which was suspended with one and one-half years to be served on probation. On February 3, 2009, Kinnaman was released from the Department of Correction and was placed on parole. Kinnaman was ordered to report to probation within three days of the completion of his parole. Kinnaman was discharged from parole on April 9, 2009. Kinnaman failed to report to probation. On May 7, 2009, the State filed a notice of probation violation. Kinnaman appeared before the trial court on July 22, 2009, and admitted to violating his probation. In finding Kinnaman in violation of his probation, the trial court revoked Kinnaman's probation and ordered him to serve two and one-half years of his previously suspended three-year sentence. Kinnaman now appeals.

DISCUSSION AND DECISION

Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. The trial court determines the conditions of probation and may revoke probation if the conditions are violated. Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed. If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants. Accordingly, a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. An abuse of discretion occurs where the decision is clearly against

the logic and effect of the facts and circumstances.

Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007) (quotations omitted).

Kinnaman argues that the trial court abused its discretion in ordering that he serve two and a half years of his previously suspended sentence because the trial court did not consider his mental state at the time of sentencing. In support, Kinnaman relies on the majority opinion in *Patterson v. State*, 659 N.E.2d 220 (Ind. Ct. App. 1995). In *Patterson*, the petitioner presented evidence at the probation revocation hearing suggesting that he was mentally ill at the time he committed the underlying crime on which his probation revocation was based. *Patterson*, 659 N.E.2d at 222. Petitioner claimed that because he could not have possessed the requisite culpability to commit the underlying crime which formed the basis for revocation, his probation could not be revoked due to the commission of the underlying crime. *Id.* On appeal, the majority determined that the probationer's mental state at the time and under the circumstances of the alleged violation is a factor to be consider if the petitioner presents evidence that he suffered from a mental disease or defect at the time of the probation violation. *Id.* 222-23. The instant matter, however, can be easily be distinguished from *Patterson*.

Here, Kinnaman did not argue during the revocation hearing that his mental health issues mitigated his violation. Indeed, while Kinnaman testified that he had some confusion over the terms of his parole and probation, he admitted that he knew that he was on probation and that he had violated that probation. Moreover, the trial court credited Kinnaman for the “potential misunderstanding” in ordering Kinnaman to serve two and one-half years of his

three-year suspended sentence rather than the full three years. Tr. p. 7. Because Kinnaman admitted his probation violation, the trial court was entitled to “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code § 35-38-2-3(g) (2008). Therefore, the trial court did not abuse its discretion in this regard.

Kinnaman also argues that the trial court abused its discretion in failing to consider the information contained in the pre-sentence investigation report (“PSI”) prepared prior to sentencing for his underlying convictions detailing his various mental and emotional problems.

However, we observe that in the case before us, the trial court did not sentence Kinnaman anew for conviction of a felony, but rather the trial court was acting pursuant to Ind. Code section 35-38-2-3(g) which again provides, in relevant part, that if the court finds that the person has violated a condition at any time before termination of the probationary period the court may “order execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code section 35-38-2-3(g) does not require that the probation office conduct a pre-sentence investigation, nor does it require the court to consider a pre-investigation report. *See Boyd v. State*, 481 N.E.2d 1124, 1127 (Ind. Ct. App. 1985) (providing that the statute does not require the trial court to consider a pre-investigation report ordering the execution of all or part of a suspended sentence following a probation violation). Kinnaman provides no authority, and we find none, which mandates that the trial court consider a pre-investigation report in imposing a sentence pursuant to Ind. Code section 35-38-2-3(g) following a probation violation. Therefore, we conclude that the trial court did

not abuse its discretion in this regard.

The judgment of the trial court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.