

Elizabeth Mathias appeals the revocation of her probation. Mathias raises one issue, which we revise and restate as whether the trial court abused its discretion by ordering Mathias to serve the balance of her remaining suspended sentence. We affirm.

The relevant facts follow. On March 22, 2010, the State charged Mathias with Count I, operating while intoxicated – endangerment as a class A misdemeanor; Count II, operating a vehicle with a schedule I or II controlled substance as a class C misdemeanor; Count III, operating with at least .08 but less than .15 blood alcohol content as a class C misdemeanor; and Count IV, possession of alcohol by a minor as a class C misdemeanor, as well as three traffic infractions. On April 5, 2010, Mathias pled guilty to Counts I, IV, and admitted to the traffic infractions, and the court sentenced her to 365 days with 359 days suspended on Count I and sixty days with fifty-four days suspended on Count IV to be served concurrent with Count I. Counts II and III were dismissed. The court placed her on informal probation for one year in which conditions were imposed including: “(3) You must not commit any additional crimes (5) You shall submit to drug/alcohol tests . . . as or when otherwise directed, **Monthly**, and shall test negative on all tests. (6) You shall not consume, inhale, or possess alcohol or drugs” Appellant’s Appendix at 22.

On June 29, 2010, the State filed a petition to revoke probation and alleged that Mathias appeared in the Huntington Superior Court on June 28, 2010 under Cause Number 35D01-1006-CM-00424 (“Cause No. 424”) for charges of possession of marijuana, possession of paraphernalia, and illegal consumption of an alcoholic beverage,

and that on June 26, 2010, she “tested .08 BAC.” Id. at 19. A warrant was issued on this petition which was executed on August 2, 2010. On that same date, Mathias was administered a random drug screen in which she tested positive for marijuana.¹ On August 3, 2010, a hearing was held on the June 29, 2010 petition, and Mathias admitted to the charges of possession of marijuana, possession of paraphernalia, and illegal consumption of an alcoholic beverage. Huntington Superior Court Judge Jeffrey Heffelfinger ordered Mathias to serve an additional sixty days of her original sentence to be served consecutively to her sentence under Cause No. 424.

On August 16, 2010, the State filed a second petition to revoke probation alleging that Mathias tested positive for marijuana on August 2, 2010. On August 20, 2010, a hearing was held on the petition and Mathias admitted to the violation. Judge Pro Tem Jennifer Newton revoked Mathias’s probation, ordered that she serve the balance of her original sentence in the Huntington County Jail, and released her from probation unsatisfactorily. In so holding, Judge Newton noted that the marijuana must have entered Mathias’s system after the original June 29, 2010 notice of violation and concluded: “I honestly don’t think you are a candidate for Probation. I don’t think you are taking it seriously.” Transcript at 27.

The issue is whether the court abused its discretion in ordering Mathias to serve the balance of her suspended sentence. Mathias argues that “[e]ven assuming for the sake of argument that Mathias did ingest marijuana some time after June 29, it is not

¹ We note that a copy of the drug screen results is not contained in the record.

clear that [she] knew about the June Petition until a warrant was read to her on August 2, the same day she was sentenced on her new charges.” Appellant’s Brief at 5. Mathias argues that “[i]n theory at least, the August 2 drug test could have been accounted for by amending the June Petition to Revoke,” and that “the trial court would have authority to consider even those violations not specifically set out in the petition itself.” Id. The State argues that “there is nothing in the record to show that the trial court considered the marijuana test when it revoked the sixty days of [Mathias’s] suspended sentence,” and that “[i]ndeed, had the trial court done so [she] would now be complaining of a due process violation for revoking part of her probation without proper notice” Appellee’s Brief at 5.

“Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). “The trial court determines the conditions of probation and may revoke probation if the conditions are violated.” Id. (citing Ind. Code § 35-38-2-3). A trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard. Id. “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.” Id. Upon the revocation of probation, the trial court may impose one or more of the following sanctions: (1) continue the person on probation, with or without modifying or enlarging the conditions; (2) extend the person’s probationary period for not more than one year beyond the original probationary period;

and (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3(g).

To the extent that Mathias argues that the August 2, 2010 positive drug screen was “[i]n theory” taken into account by the trial court when it first revoked her probation on August 3, 2010, Appellant’s Brief at 5, we note that “[i]t is error for a probation revocation to be based upon a violation for which the defendant did not receive notice.” Bovie v. State, 760 N.E.2d 1195, 1199 (Ind. Ct. App. 2002) (citing Hubbard v. State, 683 N.E.2d 618, 622 (Ind. Ct. App. 1997)). Further, we presume that the trial court knows the law, and Mathias has not shown any evidence to the contrary. Emerson v. State, 695 N.E.2d 912, 919 (Ind. 1998), reh’g denied; see also Donaldson v. State, 904 N.E.2d 294, 300 (Ind. Ct. App. 2009) (holding that we presume the trial court knows and follows the applicable law). Indeed, Mathias does not point to the record to show that the trial court considered the positive drug screen on August 2, 2010 when it imposed sixty additional days at the August 3, 2010 hearing. Moreover, at the August 20, 2010 hearing, Mathias admitted to the violation, and she does not on appeal challenge the revocation itself.

Here, On April 5, 2010, the court sentenced Mathias to 365 days with 359 days suspended to probation for operating while intoxicated and possession of alcohol by a minor. As part of her probation, Mathias agreed not to commit any additional crimes, not to consume, inhale, or possess alcohol or drugs, and to submit to drug and alcohol tests both whenever so directed and on a monthly basis. On June 29, 2010, the State filed a petition to revoke probation after Mathias had been charged with possession of

marijuana, possession of paraphernalia, and illegal consumption of an alcoholic beverage, and tested at .08 BAC on June 26, 2010. On August 2, 2010, Mathias was arrested pursuant to that petition to revoke probation, and on that date she was administered a drug test which came back positive for marijuana. A hearing was held on the petition and the court, after Mathias admitted to the violations of “failing alcohol test submitted on 6/26/10 and being arrested on a [n]ew offense,” ordered that she serve an additional sixty days of her original sentence. Appellant’s Appendix at 16. On August 16, 2010, the State filed a second petition to revoke probation that related to the positive marijuana drug screen on August 2, 2010. The court, noting that the positive drug screen was over a month after the arrest of Mathias in June that led to her first probation violation, stated in ordering Mathias to serve her remaining sentence: “I honestly don’t think you are a candidate for Probation. I don’t think you are taking it seriously.” Transcript at 27.

Given the circumstances, we cannot say that the court’s decision ordering Mathias to serve the balance of her previously-suspended sentence is clearly against the logic and effect of the facts and circumstances before the court. See Wilkerson v. State, 918 N.E.2d 458, 464 (Ind. Ct. App. 2009) (holding that the court did not abuse its discretion in ordering the probationer to serve the balance of his previously-suspended sentence in the Department of Correction); Milliner v. State, 890 N.E.2d 789, 793 (Ind. Ct. App. 2008) (holding that the trial court did not abuse its discretion in reinstating the probationer’s entire previously-suspended sentence), trans. denied.

For the foregoing reasons, we affirm the trial court's revocation of Mathias's probation and its order that she serve her previously-suspended sentence in the Huntington County Jail.

Affirmed.

ROBB, C.J., and RILEY, J., concur.