

STATEMENT OF THE CASE

Appellant-Respondent, Matthew L. Skinner (Skinner), appeals the trial court's sentence following revocation of his probation.

We affirm.

ISSUES

Skinner raises two issues for our review, which we restate as follows:

- 1) Whether the trial court abused its discretion by denying a request for sentence modification; and
- 2) Whether the trial court abused its discretion by revoking his probation and sentencing him to incarceration for twenty-two months.

FACTS AND PROCEDURAL HISTORY

On August 4, 2008, after pleading guilty, Skinner was convicted of nonsupport of a dependent child, a Class D felony. The trial court sentenced Skinner to thirty months executed, with the entirety of the sentence suspended to probation. According to the probation terms, Skinner was required to make child support payments and report to his probation officer. In the event he was unable to keep the scheduled appointment, he was required to contact the probation officer in advance and reschedule the appointment. Thereafter, Skinner failed to make child support payments and failed to keep an appointment on April 26, 2010 or call to reschedule it.

Consequently, on May 27, 2010, the State filed a verified petition of probation violation. On July 19, 2010, the trial court conducted an evidentiary hearing where Skinner

admitted his violation. Following the hearing, the trial court revoked his probation and sentenced him to incarceration for twenty-two months, executed at the Kosciusko County Jail. On July 26, 2010, Skinner filed a motion requesting sentence modification, which was denied without a hearing on August 13, 2010.

Skinner now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Sentence Modification

Skinner argues that the trial court abused its discretion when it denied his request for sentence modification without a hearing. Specifically, he claims that because he was confused about the length of his sentence and because his confusion adversely affected his request for sentence modification, the trial court should have held a hearing to clarify these circumstances.

A trial court's decision to reduce or suspend a sentence is discretionary. *Marshall v. State*, 563 N.E.2d 1341, 1343 (Ind. Ct. App. 1990). If the motion to modify a sentence is made more than one year after sentencing, the trial court lacks the requisite jurisdiction to modify a sentence without the prosecutor's agreement or acquiescence. Ind. Code § 35-38-1-17(b); *State v. Fulkrod*, 735 N.E.2d 851, 854 (Ind. Ct. App. 2000), *reh'g denied*.

However, if in a sentencing hearing for a convicted person conducted after June 30, 2001, the [trial] court could have placed the convicted person in a community corrections program as an alternative to commitment to the department of correction, the [trial] court may modify the convicted person's sentence under this section *without* the approval of the prosecuting attorney to place the convicted person in a community corrections program under [I.C. §] 35-38-2.6.

I.C. § 35-38-1-17(b) (emphasis added).¹

We review the trial court’s decision regarding sentence modification only upon a showing of abuse of discretion. *Myers v. State*, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999). An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

Here, Skinner did not meet the required standard. His reasoning mainly focused on his own state of mind. Skinner argued that he was confused about the length of his sentence when he spoke to a representative of Serenity House, a substance abuse program, on August 4, 2010. He thought that the trial court would accept the prosecutor’s and probation officer’s recommendation of incarceration for a period of six months rather than twenty-two months, at a hearing which he had requested earlier. However, the hearing never occurred; the trial court was not even required to hold one. *See Manley v. State*, 868 N.E.2d 1175, 1178 (Ind. Ct. App. 2007), *trans. denied* (“we decline [the defendant’s] invitation to create a requirement that a hearing must be held before a trial court can rule upon a request for sentence modification. . . .”). At the meeting with the Serenity House representative, Skinner expressed his thoughts to him. The representative in turn determined that the proposed length of a six-month sentence would not be enough for effective substance abuse treatment, as Serenity House routinely required individuals to stay for more than 12 months. Although Skinner might have had some basis for his “fundamental misunderstanding” about the length

¹ This provision effectively adds an exception the rule articulated in *Keys v. State*, 746 N.E.2d 405, 407 (Ind. Ct. App. 2001), *State v. Fulkrod*, 735 N.E.2d 851, 854 (Ind. Ct. App. 2000), *reh’g denied*, and their progeny concerning the trial court’s lack of authority to modify a sentence made more than one year after sentencing.

of his sentence, it is also clear that at the July 19, 2010 probation revocation hearing, the trial court unambiguously pronounced that it revoked Skinner's probation and it sentenced him to incarceration for twenty-two months, executed at the Kosciusko County Jail. (Appellant's Br. p. 9). As such, we find that Skinner clearly knew what his sentence was and that the hearing to clarify his misunderstandings was not necessary; therefore, the trial court's denial of his request to modify his sentence was not an abuse of discretion.

II. *Sentence*

Further, Skinner argues that the trial court abused its discretion in revoking the probation and sentencing him to incarceration for twenty-two months. Specifically, he contends that the trial court failed to consider his guilty plea and non-violent character of the probation violation as mitigating factors.

Probation is a matter of grace left to the trial court's 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.* Once the trial court has exercised its grace by ordering probation rather than incarceration, the trial court should have considerable leeway in deciding how to proceed. *Id.* 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. *Id.* Accordingly, 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.*

Here, again, Skinner failed to meet the required standard. He argued that the trial court should have considered the mitigating factors. We disagree. The trial court is not obliged to consider aggravating and mitigating circumstances in a probation revocation proceeding in accordance with the provisions of Ind. Code § 35-38-2-3, except for the probationer's mental health. *Patterson v. State*, 659 N.E.2d 220, 222-23 (Ind. Ct. App. 1995). As such, because Skinner violated the terms of his probation, which was basically a favor given to him by the trial court in order for him to change, and because the trial court was not required to consider his guilty plea and the non-violent character of the probation violation in the revocation hearing, we conclude that the trial court's decision was not against the logic and effect of the facts and circumstances of this case.

CONCLUSION

Based on the foregoing, we hold that the trial did not abuse its discretion when it denied Skinner's request to modify his sentence and when it revoked his probation.

Affirmed.

ROBB, C.J., and BROWN, J., concur.