

Chance M. Schubla appeals the imposition of the balance of his suspended sentence following a probation revocation. He presents the following restated issue for review: Did the trial court abuse its discretion in sanctioning Schubla?

We affirm.

On April 7, 2005, Schubla pleaded guilty to arson, a class B felony, and was sentenced to ten years in prison, with five of those years suspended to probation. He was released to probation on September 13, 2006. One of the terms of probation required Schubla to refrain from using any controlled substances. To assist in this regard, the probation department referred Schubla to the Hamilton Center upon his release, where he received individual therapy and began an intensive outpatient program. He was also referred to an outpatient program with the Greene County Drug and Alcohol Rehab Center at some point. Despite these services, Schubla continued to use illegal drugs, particularly marijuana, and never successfully completed a round of treatment.

On February 5, 2007, the State filed a petition to revoke Schubla's suspended sentence, alleging that he violated probation by testing positive for marijuana on November 2, 2006 and January 24, 2007. He admitted the allegations and, on April 24, was ordered to serve ninety-days of his suspended sentence. Thereafter, on February 11, 2008, the State filed another petition to revoke suspended sentence, alleging that Schubla had tested positive for methamphetamine and marijuana. On March 18, 2008, Schubla entered into a negotiated plea agreement, pursuant to which he admitted the allegations and was ordered to serve 270 days of the suspended sentence in the Greene County Jail on work release.

On October 2, 2008, the State filed the instant petition to revoke, alleging that Schubla had tested positive for marijuana on August 16 and 22 and September 8, 18, and 22. Once again, Schubla admitted the allegations. On October 29, 2008, the trial court revoked Schubla's probation and ordered him to serve the remaining four years and five days of his suspended sentence in prison. Schubla now appeals.

Indiana Code Ann. § 35-38-2-3(g) (West, PREMISE through 2008 2nd Regular Sess.) provides that upon finding a violation of probation, a trial court may "[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing." The decision to revoke probation is within the sound discretion of the trial court, and the trial court's decision is reviewed on appeal only for abuse of that discretion. *Woods v. State*, 892 N.E.2d 637 (Ind. 2008).

Schubla argues on appeal, as he did below, that he is addicted to marijuana and needs intensive inpatient substance abuse treatment, not incarceration. He claims that the DCS had referred him to inpatient treatment just prior to his arrest for the instant probation violation. Thus, he argues that the trial court's decision to send him back to prison "preclud[ed him] from the opportunity to treat his marijuana addiction and assur[ed] that he would have his parental rights terminated because he will be incarcerated." *Appellant's Brief* at 3.

The trial court fully considered and then ultimately rejected Schubla's request for another chance to comply with probation and seek treatment. Specifically, the court explained:

Now you know [defense counsel] is right on basically everything he said and I think everybody in the room probably agrees with that. Addiction is a monster

and causes people to do things and be people that they otherwise would not be and providing alternates, providing treatment, providing opportunities to people with addictions is I think part of this Court and part of the Probation department duties when looking at sentences, but I think the person that has the addiction has a duty and an obligation as well. Relapses are one thing, there is not an excuse for relapses, but I think to some degree you have to expect that there will be relapses, I think everybody here understands that.... I am not one that believes throwing somebody in jail cures an addiction, I don't think anybody believes that, hopefully it provides motivation to try and deal with that addiction is the best to hope for. Based on my understanding the history of this case and the information provided today you have had the opportunities for treatment and not that there have been relapsed [sic], you have not been successful with them. I am not seeing a substantial effort towards complying with the rules of probation or a substantial effort towards taking your own recovery or sobriety serious. I mean folks that are giving a complete commitment have periods of sobriety. The only record I have here is a continued pattern of use without any effort on your part whatsoever to try and deal with the addiction. You can say I enrolled in this program or I am going to enroll in that program, the proof is when you absolutely buy into it with your heart and sole [sic] and you try to overcome that addiction. You have not done that one bit. A relapse means you stopped and had a relapse. I don't think you have ever stopped. I don't think you have ever tried to stop, but this is the 3rd probation violation for a very serious felony offense, each of the 3 have been substance abuse related, if you recall well let me go back through the history, the original offense was a Class B Felony, Arson, the former Judge in this Court entered the sentence based on the information available at that time which I believe was a pretty lenient sentence, gave you credit for a lot of your life circumstances and gave you an opportunity to overcome that and get assistance. Then came the first probation violation for substance abuse, 90 days out of 5 years hanging over your head. You had another substantial opportunity to obtain assistance and follow through with that, then came the second probation violation for substance abuse. 270 days revoked, that was another opportunity to get hold of your addiction and your life circumstances and you wholly ignored that, took no effort to try and comply with that or advantage of the opportunities to get hold of your addiction....This is the 3rd violation of a very serious felony probation for the same offenses and you have shown no personal commitment to addressing the problems. Because you have complied with the first 9 out of 10 so to speak rules of probation, when you violate the 10th one is a violation. You don't get to pick and choose which of the probation rules you comply with and which ones you don't, you have consistently shown that you are not probation material in this case, you have shown that you are not going to address this

substance abuse problem with any seriousness, and you are just going to continue to use. You will have the opportunity to complete that treatment, that is something you have to find within yourself whether you choose to do that for yourself, for your wife, for your child, for whatever reason you will have that opportunity and we will see what you are made of, whether you choose to do that on your own or whether you don't. It is your opportunity to show everybody what you are made of. You will have that opportunity. But based on the history of this case, the information provided today, I just don't see any alternative, should have been done the last time, but I gave you a third opportunity, and you choose not to take advantage of it in any form, so the order today is to modify your sentence, I am going to revoke the full 1,465 days ordered that served in the Indiana Department of Corrections [sic]....

Transcript at 33-37. The trial court's reasoning is sound, and we find no abuse of discretion in its decision to impose the balance of Schubla's suspended sentence.

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.