

In *Thomas v. State*, No. 49A02-1002-CR-173 (Ind. Ct. App. October 25, 2010), we affirmed the revocation of Thomas' probation. In his petition for rehearing, Thomas contends, among other things, that we materially misstated the record before us. We grant rehearing to clarify our holding regarding his claim of mental illness, and to reaffirm our prior holding.

Thomas takes issue with our holding that he presented no evidence to prove a diagnosis of Post Traumatic Stress Disorder (PTSD), which he contends the trial court erroneously did not consider. While he is correct the record contains information he provided regarding his behavioral and substance abuse issues that he attributes to PTSD, he offered no diagnosis from a health professional, nor did he provide any evidence of treatment for the alleged disorder. His assertions of mental illness are no more than self-serving statements, which the trial court is not required to consider. *Cain v. State*, 261 Ind. 41, 44, 300 N.E.2d 89, 91 (1973). "To admit such declarations in evidence on his behalf, would be to allow a party to make evidence for himself, and, if believed, to disprove the imputation of malice, clearly apparent from the circumstances. This would be against all principle, and productive of great evil." *Id.* (citing *Newcomb v. State*, 37 Miss 383, 399 (1859)).

Further, *Cone v. Bell*, 129 S.Ct. 1769 (2009), one of the cases relied upon by Thomas in support of his contention that people with PTSD "often have trouble following rules, obeying the law, and complying with societal norms" cite differs significantly from his own primarily because Cone, unlike Thomas, had been diagnosed with PTSD by a clinical

psychologist.¹ *Id.* at 1774. The trial court should not act as a mental health professional, and use the symptoms described by a defendant to diagnose him or her with a mental disorder that would then act as a mitigator. Thus, since Thomas provided no evidence of a medical diagnosis of PTSD, we reaffirm our holding that his alleged mental illness was undiagnosed, and thus the trial court did not err when failing to consider it as a mitigating factor in his probation revocation. *See Covington v. State*, 842 N.E.2d 345, 348 (Ind. 2006) (“the weight assigned to a mitigator is at the trial judge’s discretion, and the judge is under no obligation to assign the same weight to a mitigating circumstance as the defendant.”). We further reaffirm our earlier opinion in all other aspects.

Affirmed.

ROBB, J., and VAIDIK, J., concur.

¹ For the purpose of addressing completely the cases Thomas cites in his Petition for Rehearing, we note *Reid v. State*, 876 N.E.2d 1114 (Ind. 2007); *Greer v. State*, 749 N.E.2d 545 (Ind. 2001); *Indiana State Police v. Wiessing*, 836 N.E.2d 1038 (Ind. Ct. App. 2005); *Jones v. Chater*, 65 F.3d 102 (8th Cir 1995); and *Black v. Collins*, 962 F.2d 394 (5th Cir. 1992) are all distinguishable because, as in *Cone*, the defendants were diagnosed with PTSD prior to the trial court considering the behavior associated therewith to be mitigating. Further, while we agree with Thomas’ assertion that *Porter v. McCollum*, 130 S.Ct. 447 (2009) held “a defendant’s drug addiction, which results from honorable combat service in the United States military, can have significant mitigating value,” (Appellant’s Petition for Rehearing at 6) we note the trial court is not obligated to weigh or credit the mitigating factors in the manner a defendant suggests they should be weighed or credited. *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005).