

defendant serve the term while in impact incarceration. The defendant successfully completed his sentence through impact incarceration on August 13, 1993.

¶ 5 Fourteen years later, on March 7, 2007, the defendant was charged with the federal offense of possessing a firearm as a felon and traveling in interstate with the firearm pursuant to 18 U.S.C. § 922(g) (2006). He pled guilty on April 15, 2008. When he was sentenced, the United States district court considered his prior criminal history, which included the residential burglary from 1992. That prior conviction enhanced the defendant's sentence from 5 years' imprisonment to 180 months' imprisonment pursuant to 18 U.S.C. § 924(e) (2008).

¶ 6 The defendant filed the current postconviction petition on October 12, 2010, pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2010)). His postconviction petition comes 17 years after his conviction for residential burglary. In his petition, the defendant argued that his cause should be remanded for an evidentiary hearing. He argued that he was not advised by his counsel or the circuit court that his previous conviction could potentially enhance a later conviction, specifically his federal conviction. On October 28, 2010, prior to the State filing any response to the defendant's petition, the circuit court dismissed the defendant's postconviction petition as untimely. This appeal follows.

¶ 7 ANALYSIS

¶ 8 We begin by noting that the circuit court's dismissal of the defendant's postconviction petition was premature and, thus, improper. When a defendant does not file a postconviction petition in a timely manner, the State must move to dismiss the petition before the circuit court may dismiss it. *People v. Bocclair*, 202 Ill. 2d 89, 98-99 (2002). In this case, the circuit court dismissed the postconviction petition before the State moved to dismiss it. Therefore, the dismissal upon those grounds was improper. However, we may

affirm the circuit court's judgment for any reason supported by the record, even if our reason differs from the circuit court's reasoning. *People v. Davis*, 382 Ill. App. 3d 701, 706 (2008). We find other reasons for which the dismissal would have been proper.

¶ 9 To seek a remedy under the Act, a defendant must be in custody for the conviction which he is attacking in his postconviction petition. *People v. West*, 145 Ill. 2d 517 (1991). "Custody" includes probation terms and mandatory supervised release. *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 11. The remedy available under the Act is only available to defendants who are currently in the custody of the Illinois Department of Corrections, not defendants "who have completely served their sentences and merely wish to purge their criminal records of past convictions." *Henderson*, 2011 IL App (1st) 090923, ¶ 10. The defendant is not currently in the custody of the Illinois Department of Corrections, but instead is in the custody of the Federal Bureau of Prisons. Nor is the defendant serving any term of probation or mandatory supervised release in connection with the conviction in question. In fact, the defendant successfully completed his sentence in 1993. Therefore, the defendant's petition should have been dismissed because the circuit court had no authority to hear the defendant's petition as he was not in the custody of the Illinois Department of Corrections. We uphold the dismissal of the defendant's postconviction petition for that reason.

¶ 10 **CONCLUSION**

¶ 11 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 12 Affirmed.