

counsel on appeal and affirm the judgment of the circuit court of Madison County.

¶ 3

BACKGROUND

¶ 4 On August 17, 2007, defendant entered a negotiated plea of guilty to unlawful delivery of 1 gram or more but less than 15 grams of a substance containing cocaine (720 ILCS 570/401(c)(2) (West 2006)). Pursuant to the agreement, defendant was sentenced to 24 months' probation. Defendant did not attempt to withdraw his guilty plea, nor did he file an appeal. On January 13, 2009, the circuit court entered an order discharging defendant from probation.

¶ 5 On June 10, 2011, defendant filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2010)), alleging that he recently discovered that, before entering his guilty plea, his trial counsel had failed to disclose evidence that would have established his innocence. He alleged ineffective assistance of counsel and also argued that he was innocent. The petition also alleged that defendant was presently serving a 30-year sentence in federal prison for a federal offense.

¶ 6 The circuit court dismissed defendant's postconviction petition, finding that he had successfully completed his probation and had been discharged therefrom. This appeal follows.

¶ 7 The Act provides that "[a]ny person imprisoned in the penitentiary may institute a proceeding under this Article." 725 ILCS 5/122-1(a) (West 2010). The phrase "imprisoned in the penitentiary" has been liberally construed to include those who have been sentenced to a term of probation rather than imprisonment. *People v. Pack*, 224 Ill. 2d 144, 145 (2007). However, the supreme court has held that postconviction relief is not available to a petitioner who has fully served his underlying sentence. *People v. West*, 145 Ill. 2d 517 (1991). In *West*, the underlying sentence was used as an aggravating factor by a court in Arizona to sentence the petitioner to death, and the petitioner sought to attack his Illinois

conviction in order to challenge his Arizona sentence. *West*, 145 Ill. 2d at 518. The supreme court held that the petitioner's imprisonment in an Arizona prison was not imprisonment within the meaning of the Act because he had fully served his Illinois sentence. *West*, 145 Ill. 2d at 519. Postconviction relief is not available to a defendant whose probation has been discharged prior to his filing a petition because the defendant is no longer constrained of his liberty by virtue of his conviction. *People v. Mrugalla*, 371 Ill. App. 3d 544 (2007). Further, postconviction relief is not available to those who have already completed their sentences and simply wish to purge their records of past convictions. *People v. Thurman*, 334 Ill. App. 3d 286, 289 (2002).

¶ 8 Here, like the petitioner in *West*, at the time he filed his postconviction petition, defendant had already served his sentence and the court had entered an order discharging him from probation. Therefore, he was no longer "imprisoned" as required by the Act. Relief pursuant to the Act is not available to him and the circuit court properly dismissed his postconviction petition.

¶ 9 **CONCLUSION**

¶ 10 For the foregoing reasons, the motion of the State Appellate Defender to withdraw as counsel is granted, and the judgment of the circuit court of Madison County is affirmed.

¶ 11 Motion granted; judgment affirmed.