



(Ill. Rev. Stat. 1991, ch. 38, ¶¶ 8-4, 9-1), and of armed robbery in that he took property from the victim's person while armed with a dangerous weapon (Ill. Rev. Stat. 1991, ch. 38, ¶ 18-2).

¶ 5 In December 1992, the trial court sentenced defendant to extended 45-year prison terms for each count, to run consecutively. Both counts were Class X felonies under section 5-8-1(3) of the Unified Code of Corrections (Unified Code) (Ill. Rev. Stat. 1991, ch. 38, ¶ 1005-8-1(3)). The extended-term sentences were pursuant to section 5-8-2 of the Unified Code. Ill. Rev. Stat. 1991, ch. 38, ¶ 1005-8-2. The consecutive terms were pursuant to section 5-8-4 of the Unified Code. Ill. Rev. Stat. 1991, ch. 38, ¶ 1005-8-4. This court affirmed defendant's conviction in *People v. Freeman*, No. 4-92-1033 (Oct. 8, 1993) (unpublished order under Supreme Court Rule 23).

¶ 6 In November 1995, defendant filed a *pro se* postconviction petition. In January 1996, on the State's motion, the trial court dismissed and struck the petition as not filed within the proper time. In October 1997, this court affirmed the trial court's judgment. *People v. Freeman*, No. 4-96-0484 (Oct. 31, 1997) (unpublished order under Supreme Court Rule 23).

¶ 7 In June 2002, defendant filed a petition for relief from judgment (735 ILCS 5/2-1401 (West 2002)), arguing his sentences were unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which the trial court dismissed. In June 2004, this court affirmed the trial court's decision. *People v. Freeman*, No. 4-02-0858 (June 4, 2004) (unpublished order under Supreme Court Rule 23). In November 2004, defendant filed a second petition arguing by finding the offenses exceptionally brutal and heinous at sentencing, the trial court violated the prohibition against double jeopardy. In June 2005, the trial court dismissed this successive petition on the State's motion. In February 2008, this court affirmed the trial court's decision.

*People v. Freeman*, No. 4-05-0590 (Feb. 25, 2008) (unpublished order under Supreme Court Rule 23).

¶ 8 In November 2010, defendant filed the instant *pro se* postconviction petition with a motion seeking leave to file a successive petition. In December 2010, the trial court ruled it would consider the merits because defendant had "not previously filed" a postconviction petition. On December 9, 2010, the trial court by written order said it considered the merits and dismissed the petition, concluding it was frivolous and patently without merit.

¶ 9 On January 7, 2011, defendant filed his notice of appeal, and the trial court appointed OSAD to serve as his attorney. In December 2011, OSAD moved to withdraw, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by January 18, 2012. Defendant has not done so. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the court's judgment.

¶ 10 II. ANALYSIS

¶ 11 OSAD argues this appeal presents no meritorious issues. Specifically, OSAD contends the trial court properly dismissed defendant's *pro se* motion for postconviction relief at stage one because (1) the petition did not present the gist of a constitutional deprivation, and (2) the trial court properly summarily dismissed defendant's petition within 90 days.

¶ 12 A. Standard of Review

¶ 13 Section 122-1 of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/122-1 (West 2010)) permits the institution of a postconviction proceeding asserting the

proceedings resulting in defendant's conviction were a substantial denial of his rights under the federal or state constitutions or both. "[A] postconviction proceeding is a collateral attack upon the prior conviction and affords only limited review of constitutional claims not presented at trial." *People v. Harris*, 224 Ill. 2d 115, 124, 862 N.E.2d 960, 966 (2007). Section 122-2.1(a)(2) provides when a petitioner is sentenced to imprisonment, the trial court shall review the petition within 90 days of its filing and docketing and enter an order if it determines it is frivolous and without merit dismissing the same. 725 ILCS 5/122-2.1(a)(2) (West 2010). To survive dismissal, a *pro se* postconviction petition's allegations, taken as true, must present the "gist" of a constitutional claim, which is a "low threshold." *People v. Jones*, 211 Ill. 2d 140, 144, 809 N.E.2d 1233, 1236 (2004). Otherwise, a petition is considered frivolous or patently without merit. *People v. Delton*, 227 Ill. 2d 247, 254, 882 N.E.2d 516, 519 (2008) (quoting *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996)). A petition is frivolous or patently without merit if it has no "arguable basis either in law or fact," which is defined as being "based on an indisputably meritless legal theory or a fanciful factual allegation." *People v. Hodges*, 234 Ill. 2d 1, 16, 912 N.E.2d 1204, 1212 (2009). The summary dismissal of a postconviction petition is reviewed *de novo*. *People v. Swamynathan*, 236 Ill. 2d 103, 113, 923 N.E.2d 276, 282 (2010).

¶ 14 B. Defendant's Claim Public Act 80-1099 Is Unconstitutional

¶ 15 First, OSAD contends the trial court properly dismissed defendant's *pro se* postconviction petition because defendant's petition does not present the gist of a constitutional deprivation. Specifically, defendant claims Public Act 80-1099 is unconstitutional because the Eightieth General Assembly did not (1) follow its parliamentary rules of procedure, and (2) follow the public notice requirement of the Illinois constitution. We agree with OSAD.

¶ 16 In his petition, defendant asserts Public Act 80-1099 is unconstitutional in its entirety (Pub. Act. 80-1099 (eff. Feb. 1, 1978) (1977 Ill. Laws 3264)). He complains specifically about Public Act 80-1099, section 3 ((Pub. Act 80-1099, § 3 (eff. Feb. 1, 1978)) (1977 Ill. Laws at 3308, 3289) (amending sections 5-8-1 and 3-6-3 of the Unified Code, respectively (Ill. Rev. Stat. 1981, ch. 38, ¶¶ 1005-8-1(3), 1003-6-3)), which enacted the Class X felony sentencing guidelines and the provision for rules and regulations for early release. Defendant contends Public Act 80-1099 is unconstitutional because the General Assembly (1) violated rules of parliamentary procedure and (2) violated the public notice clause in article IV, sections 5 and 7, of the Illinois Constitution of 1970 (Ill. Const. 1970, art. IV, §§ 5, 7).

¶ 17 Defendant's petition asserts section 5-8-1, as amended, of the Unified Code is unconstitutional (730 ILCS 5/5-8-1 (West 2010)). Because the current section 5-8-1 of the Unified Code (1) refers to natural life imprisonment, to which defendant was not sentenced, and (2) was enacted after the commission of the crime, we construe defendant's assertion to mean section 5-8-1(3), the Class X felony sentencing provision of the Unified Code (Ill. Rev. Stat. 1991, ¶ 1005-8-1(3)). Additionally, defendant asserts the provision for rules and regulations for early release in section 3-6-3 of the Unified Code (Ill. Rev. Stat. 1991, ch. 38, ¶ 1003-6-3) is unconstitutional for the same reasons.

¶ 18 1. *Whether the General Assembly Violated Its Parliamentary Rules*

¶ 19 Defendant claims the Eightieth General Assembly violated its parliamentary rules while debating Public Act 80-1099. Defendant posits the Senate violated Senate Rules 5-4, 7-10, and 12-2 (Senate Rule 5-4 ("Amendments"), 7-10 ("Tabling"), and 12-2 ("Robert's Rules")) included in *Handbook for Illinois Legislature* (95th General Assembly)) during the debates on

House Bill 1500, which became Public Act 80-1099. We note defendant cites senate rules for the Ninety-Fifth General Assembly and not the Eightieth General Assembly.

¶ 20 OSAD argues no Illinois authority supports the proposition an appellate court may invalidate legislation based on a claim the legislative body violated its own rules in passing legislation. Additionally, Illinois courts recognize it is within the prerogative of the General Assembly to establish, interpret, and enforce its own procedural rules. In support, OSAD cites *Durjak v. Thompson*, 144 Ill. App. 3d 594, 595, 494 N.E.2d 589, 590 (1986), where the First District rejected an argument an act was invalid because the General Assembly did not comply with internal, procedural rules; and *Chirikos v. Yellow Cab Co.*, 87 Ill. App. 3d 569, 574, 410 N.E.2d 61, 65 (1980), where the First District rejected the argument it had the authority to overrule a city ordinance for the alleged failure of the city counsel to follow internal procedures.

¶ 21 Our own research supports OSAD's argument. Legislative acts are afforded a considerable presumption of constitutionality. *People v. Olender*, 222 Ill. 2d 123, 132, 854 N.E.2d 593, 599 (2005). Under the general rule governing judicial review of substantive legislation, an act cannot be declared invalid for a failure of a house to observe its own rules. *Illinois Gasoline Dealers Ass'n v. City of Chicago*, 119 Ill. 2d 391, 404, 519 N.E.2d 447, 452 (1988). As such, deviations from legislative procedural requirements are not subject to judicial review. *Benjamin v. Devon Bank*, 68 Ill. 2d 142, 147, 368 N.E.2d 878, 880-81 (1977). In sum, courts do not have the authority to invalidate legislation upon the grounds its enactment was contrary to internal procedural rules. See *Gofis v. County of Cook*, 324 Ill. App. 3d 407, 416-17, 754 N.E.2d 374, 382-83 (2001) (refusing to invalidate ordinance on the grounds county board may have failed to follow its own procedures in its enactment).

¶ 22 Defendant's claim this court can invalidate a law because the General Assembly allegedly violated parliamentary rules is a "meritless legal theory" within the meaning of *Hodges*. Because no colorable argument can be made Public Act 80-1099 is unconstitutional on the ground the General Assembly did not follow internal rules of procedure, defendant's claim does not present the gist of a constitutional claim capable of redress.

¶ 23 *2. Whether the General Assembly Violated the Public Notice Requirement of the Illinois Constitution*

¶ 24 Defendant contends Public Act 80-1099 is unconstitutional because the Eightieth General Assembly violated article IV, section 7, of the Illinois Constitution of 1970. This provision states, "[c]ommittees of each house, joint committees of the two houses and legislative commissions shall give reasonable public notice of meetings, including a statement of subjects to be considered." Ill. Const. 1970, art. IV, § 7. Additionally, defendant contends the General Assembly violated article IV, section 5, clause c of the Illinois Constitution of 1970 (Ill. Const. 1970, art. IV, § 5, cl. c) when debating Public Act 80-1099. This clause states, "[s]essions of each house of the General Assembly \*\*\* shall be open to the public." Specifically, defendant charges the Eightieth General Assembly violated these provisions by proposing, adopting, and passing the legislation all in the same day.

¶ 25 A *pro se* postconviction petition is not required to set forth a complete and detailed factual recitation, but it must set forth some facts that can be corroborated and are objective in nature. *Delton*, 227 Ill. 2d at 254-55, 882 N.E.2d at 520. Broad conclusory allegations are not allowed under the postconviction petition statute. *Delton*, 227 Ill. 2d at 258, 882 N.E.2d at 522.

¶ 26 We find no Illinois case invalidating a law for violation of these provisions. A review of the legislative history during November 1977 shows the debate of House Bill 1500 was on the House and Senate floor, and not in committee. Thus, a plain reading of article IV, section 7, would find it inapplicable. No facts suggest the General Assembly was not open to the public during debate or passage of Public Act 80-1099. Indeed, the legislative record shows members of the public were in the senate gallery on November 22, 1977. 80th Ill. Gen. Assem., Senate Proceedings, Nov. 22, 1977, at 1. Last, the legislative history shows House Bill 1500 was passed in the House on May 19, 1977 (80th Ill. Gen. Assem., House Proceedings, May 19, 1977, at 108), six months before it was passed into law. Contrary to defendant's suggestion, the reforms found in Public Act 80-1099 were debated over an extended period of time.

¶ 27 Defendant's argument Public Act 80-1099 is unconstitutional is patently without merit. No facts support defendant's argument the General Assembly violated the public notice requirements of the constitution. The legislative history shows Public Act 80-1099 was the result of an extended legislative process and not a single-day transaction as defendant suggests.

¶ 28 We agree with OSAD no meritorious issues can be raised as to the constitutionality of Public Act 80-1099 or the particular provisions of which defendant complains.

¶ 29 C. Whether the Trial Court Properly Followed the Procedural Requirements for Summary Dismissal of Defendant's Petition for Postconviction Relief

¶ 30 OSAD argues no meritorious issue can be raised regarding the trial court's procedural handling of defendant's petition. We agree.

¶ 31 Section 122-2.1(a) of the Procedure Code states, in pertinent part:

"Within 90 days after the filing and docketing of each petition, the court shall examine such petition and enter an order thereon pursuant to this Section.

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(2) If the petitioner is sentenced to imprisonment and the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision. Such order of dismissal is a final judgment and shall be served upon the petitioner by certified mail within 10 days of its entry." 725 ILCS 5/122-2.1(a)(2) (West 2010).

¶ 32 The 90-day time requirement is mandatory and a court's noncompliance with the time requirement renders a summary dismissal void. *Swamynathan*, 236 Ill. 2d at 113, 923 N.E.2d at 282.

¶ 33 The record shows defendant filed his postconviction petition on November 12, 2010. The trial court dismissed the petition on December 9, 2010. Thus, the trial court properly dismissed the petition within 90 days of the filing and docketing of the petition as required by section 122-2(a)(2) of the Procedure Code. The State did not present evidence, and the trial court considered the petition on its merits. Nothing in the record shows the court went outside of the court file, direct appeal record, or appellate court decisions. Notice of the adverse judgment was sent to defendant on December 13, 2010, pursuant to Rule 651(b) within 10 days of dismissal.

