

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

FREDDIE MCGEE,

Petitioner,

v.

CASE NO. 06-3074-RDR

DUKE TERRELL, et al.,

Respondents.

O R D E R

This is a petition for writ of habeas corpus filed pursuant to 28 U.S.C. 2241 by an inmate of the United States Penitentiary, Leavenworth, Kansas. Petitioner also moves for leave to proceed in forma pauperis (Doc. 2) and appointment of counsel (Doc. 3).

Petitioner was convicted in 1995 of conspiracy to possess cocaine base with intent to distribute in violation of 21 U.S.C. 846, and assault on a federal officer with a deadly weapon under 18 U.S.C. 111. U.S. v. Wilson v. McGee, 103 F.3d 1402, 1403 (8<sup>th</sup> Cir. 1997). He complains he is being imprisoned (1) in violation of 18 U.S.C. 4001(a), which he refers to as the Non-Detention Act; (2) in violation of his First Amendment right to "Freedom of Intimate Association with his family as he prefers;" and (3) in violation of due process.

Having reviewed the materials filed by petitioner, the court finds no ground for federal habeas corpus relief is stated. Petitioner's first claim that his imprisonment violates the "Non-Detention Act" is frivolous. 18 U.S.C. 4001(a) provides: "No

citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress." Clearly, petitioner is detained by acts of Congress, namely 21 U.S.C. 846 and 18 U.S.C. 111.

Petitioner's other two claims are not supported by any factual allegations whatsoever. If petitioner is challenging the legality of his sentences to imprisonment rather than the execution of his sentences, his sole remedy is by motion filed in the sentencing court pursuant to 28 U.S.C. 2255. The court concludes the Petition is frivolous on its face.

**IT IS THEREFORE BY THE COURT ORDERED** that petitioner's motion for leave to proceed in forma pauperis (Doc. 2) is granted, petitioner's motion for appointment of counsel (Doc. 3) is denied, and this action is dismissed and all relief is denied.

**IT IS SO ORDERED.**

DATED: This 6th day of April, 2006, at Topeka, Kansas.

s/RICHARD D. ROGERS  
United States District Judge