

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**JAMES CHANEY, JR.
ADC #158270**

PLAINTIFF

v.

CASE NO. 4:18-CV-00478 BSM

ASA HUTCHINSON, et al.

DEFENDANTS

ORDER

The proposed findings and recommendations [Doc. No. 4] submitted by United States Magistrate Judge Jerome T. Kearney and plaintiff James Chaney's objections [Doc. No. 5] have been reviewed. After *de novo* review of the record, the proposed findings and recommendations are adopted in their entirety. Although Chaney appears to assert new claims in his objections, including double jeopardy claims and an "access to the courts" claim, a party may not offer new legal theories in objections to a magistrate judge's report and recommendation when those arguments have not been presented to the magistrate judge or addressed in the report and recommendation. *Hylla v. Transp. Commc'ns Int'l Union*, 536 F.3d 911, 921-22 (8th Cir. 2008). Accordingly, Chaney's petition is dismissed without prejudice. He may reassert his claim for damages if his continued confinement is later invalidated through appropriate state procedures.

Dismissal of this action counts as a "strike" under 28 U.S.C. section 1915(g). Pursuant to 28 U.S.C. section 1915(a)(3), it is certified that an *in forma pauperis* appeal from this order would not be taken in good faith.

IT IS SO ORDERED this 29th day of August 2018.

Brian S. Miller
UNITED STATES DISTRICT JUDGE