

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-1527

United States of America,

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Appellee,

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v.

* Appeal from the United States

* District Court for the

* District of North Dakota.

Kristopher Kai Hamberg,

*

* [UNPUBLISHED]

Appellant.

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Submitted: September 25, 2008

Filed: September 30, 2008

Before WOLLMAN, SMITH, and GRUENDER, Circuit Judges.

PER CURIAM.

Kristopher Hamberg appeals the district court's¹ post-judgment order partially denying his motion to set aside a protective order. As a threshold matter, we conclude that Hamberg's motion to set aside the protective order was civil in nature, and thus his notice of appeal was timely filed. See Fed. R. App. P. 4(a)(1)(B) (in civil case, when United States is party, time to file NOA is 60 days after entry of judgment or order being appealed); cf. United States v. Miramontez, 995 F.2d 56, 58 (5th Cir. 1993) (defendant's post-judgment request for disclosure of grand jury transcripts was

¹The Honorable Rodney S. Webb, United States District Judge for the District of North Dakota.

civil in nature because, inter alia, criminal conviction had long been final and stated purpose of request was need for materials to file civil habeas petition).

Upon review, we conclude that the types of issues raised in Hamberg's motion are more appropriately addressed in a collateral proceeding under 28 U.S.C. § 2255. Accordingly, we modify the district court's order to be without prejudice, and we affirm the order as modified.
