UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-1434
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

JOHN DOUGLAS WILSHUSEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(CR 3 91 022 H)

October 4, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:[1]

John Douglas Wilshusen (Wilshusen) was convicted of conspiracy to defraud in violation of 18 U.S.C. § 371. The district court sentenced him to sixty months of imprisonment, and ordered him to pay a $100,000 fine and a $50 special assessment. Wilshusen challenges both his conviction and his sentence. We affirm.

---

[1]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I.

Wilshusen pleaded guilty to count I of a 15-count superseding indictment charging him with conspiring to defraud through a scam in which he and others induced investors to invest money in a program that purported to invest in Mexican currency. The indictment alleged that Wilshusen acted as a broker, supervised others associated with the investment program, and laundered funds received from investors. Wilshusen was sentenced below the guideline range to the maximum statutory sentence of 60 months imprisonment with three years supervised release. Wilshusen was also ordered to pay a $100,000 fine and a $50 special assessment.

In computing Wilshusen's offense level, the district court started with an offense level of 20, the offense level for the underlying offense, money laundering. U.S.S.G. § 2X1.1(a); § 2S1.1(a)(2). The probation officer recommended a seven level increase because the total quantity of laundered funds exceeded $3,500,000. **See** § 2S1.1(b)(2)(H). Instead, the district court calculated the total amount of laundered funds as $3,383,000, which resulted in a six-level increase.[2] **See** § 2S1.1(b)(2)(G). Three levels were added because of Wilshusen's role as manager or supervisor. The district court refused to reduce the offense level for acceptance of responsibility.

---

[2]Wilshusen contended that the total figure was only $330,000. If the district court had accepted Wilshusen's argument, the offense level would have been increased two levels. § 2S1.1(b)(2)(C).

Wilshusen's total offense level was 29. With a criminal history category I, the guideline imprisonment range was 87 to 108 months. **See** § 5A. When the maximum statutory sentence is less than the minimum sentence under the applicable guideline range, the guideline sentence is the statutory maximum sentence. § 5G1.1(a). In this case, the maximum statutory sentence was five years.[3] **See** 18 U.S.C. § 371.

II.

Wilshusen contends that the plea colloquy did not comply with the requirements of Fed. R. Crim. P. 11. Rule 11 embodies three core concerns, (1) whether the guilty plea was coerced, (2) whether the defendant understands the nature of the charges, and (3) whether the defendant understands the direct consequences of the plea. **United States v. Dayton**, 604 F.2d 931, 937 (5th Cir. 1979), **cert. denied**, 445 U.S. 904, **and cert. denied**, 445 U.S. 971 (1980). When an appellant claims that a district court has failed to comply with rule 11, whether the alleged failure is total or partial, we conduct a two-question "harmless error" analysis: "(1) Did the sentencing court in fact vary from the procedures required by Rule 11, and (2) if so, did such variance affect substantial rights of the defendant?" **United States v. Johnson**, No. 92-8057, ___F.2d___, ___ (5th Cir. 1993)(en banc); **United States v. Bachynsky**, 934 F.2d 1349, 1359, 1360 (5th Cir.), **cert. denied**, 112 S. Ct. 402 (1991) (en banc) (**Bachynsky II**). Wilshusen contends that the district

[3]Wilshusen contended that his offense level should have been calculated as 22. The guideline range for criminal history category I/level 22 is 41-51 months. § 5A.

court failed to address the second and third core concerns of Rule 11.

Wilshusen first contends that the district court failed to determine whether he understood the nature of the charges against him. Under Rule 11(c)(1), "[b]efore accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following: (1) the nature of the charge to which the plea is offered . . . ." Fed. R. Crim. P. 11(c)(1). With respect to this requirement, the Court has refused to "state a simple mechanical rule." **Dayton**, 604 F.2d at 937-38. Instead, the application of this aspect of Rule 11 is committed to the "good judgment" of the district court, based upon the complexity of the charges and the sophistication of the defendant. **Id.** at 938.

In **Bachynsky II**, although the en banc court reversed the prior opinion of the panel, the court adopted the disposition of the panel opinion on whether the district court had adequately determined that Bachynsky understood the nature of charges against him. **Bachynsky II**, 934 F.2d 1354 n.5; **see United States v. Bachynsky**, 924 F.2d 561 (5th Cir. 1991) (**Bachynsky I**). Bachynsky admitted that the district court had partially addressed the issue but contended that his conviction should be reversed because the colloquy was inadequate considering the complexity of the case. 924 F.2d at 565. Rejecting this argument, the Court reasoned,

> We agree with Bachynsky that the charges to which he pled guilty were complex and that the district court did not explain every facet of each charge. But the purpose of Rule 11 is not to have every detail of the charge read

> aloud to the defendant; rather, its purpose is to ensure that the defendant adequately understands the charge to which he is pleading guilty, and to have that understanding documented on the record.

Id. Bachynsky was a sophisticated and highly educated defendant who was represented by competent counsel. The district court asked Bachynsky if he understood the nature of the charges against him. Bachynsky indicated that he did and that he had discussed the charges with his attorney. Additionally, Bachynsky had been personally involved in the plea negotiations, and acknowledged that he had read the plea agreement and had discussed it with his counsel. The Court concluded that the district court's error was harmless. **Id.**

Similarly, in this case, the district court determined on the record that Wilshusen had graduated from law school. Wilshusen's counsel stated that he had reviewed the charges with his client and was satisfied that he understood them. The Assistant United States Attorney (AUSA) read a lengthy summary of the indictment into the record. In his summary, the AUSA reviewed the facts underlying the count to which Wilshusen pleaded guilty and stated that Wilshusen had knowingly conspired with others to execute a scheme and artifice to defraud investors in the peso program. Wilshusen was given an opportunity to ask questions regarding the indictment. Wilshusen's attorney represented, and Wilshusen agreed, that he had reviewed the plea agreement and the factual resume with Wilshusen "verbatim." The AUSA summarized the terms of the plea agreement and factual resume for the record and stated that Wilshusen had acknowledged in the agreement that he understood the nature of the

charges. Wilshusen's attorney represented that the AUSA's summary of the plea agreement and factual resume was substantially accurate and Wilshusen agreed. Finally, Wilshusen's attorney represented that Wilshusen's guilty plea was being knowingly and voluntarily entered.

Although the district court did not inform Wilshusen of the legal elements of the offense of conviction, **see United States v. Punch**, 709 F.2d 889, 897 (5th Cir. 1983), the record reflects that the district court did attempt to discern whether Wilshusen understood the nature of the charge. Given Wilshusen's sophistication and familiarity with the legal nuances of this case, as evidenced by his pro se pleadings and the briefs filed on his behalf by counsel, any failure by the district court to address this core concern of Rule 11 was harmless.

Wilshusen also contends that the district court failed to inform him of the consequences of his guilty plea. Specifically, Wilshusen complains that the district court failed to advise him that, if he does not pay his fine, he will be subject to a term of imprisonment.

Rule 11 requires that the defendant be advised of the "maximum possible penalty" provided by law. **Bachynsky II**, 934 F.2d at 1356-57. "Inasmuch as the rule says `penalty' and not term, the `maximum possible penalty' element is more extensive than mere incarceration time; it includes, without limitation, **fines**, restitution, forfeitures and supervised release." **Id.** at 1356 n.9.

Wilshusen relies on the Court's opinions in **United States v. Molina-Uribe**, 853 F.2d 1193, 1200 (5th Cir. 1988) (failure to advise defendant of effects of supervised release requires automatic reversal), **cert. denied**, 489 U.S. 1022 (1989) and **United States v. Reyes-Ruiz**, 868 F.2d 698 (5th Cir. 1989). **Molina-Uribe** and **Ruiz-Reyes** were expressly overruled by the en banc Court in **Bachynsky II**.

In **Bachynsky II**, the Court held that a failure to advise a defendant of the effects of supervised release constitutes a partial failure to address this core concern as long as the total possible penalty which can be imposed under the sentence of imprisonment and for a violation of the term of supervised release does not exceed the maximum statutory sentence. 934 F.2d at 1359-60. Wilshusen also cites **United States v. Hekimain**, 975 F.2d 1098 (5th Cir. 1992). In **Hekimain**, the Court, applying **Bachynsky II**, held that the failure of the district court to advise the defendant of the effects of supervised release constituted a complete failure to address a core concern of Rule 11 because the total sentence which could have resulted if the defendant violated the terms of supervised release would have exceeded the maximum statutory sentence. 975 F.2d at 1102-03.

In the case of a failure to pay a fine, however, the default by the defendant does not necessarily result in the imposition of an additional period of incarceration. Instead, in the event of a knowing failure to pay a delinquent fine, the district court "may **resentence** the defendant **to any sentence which might originally**

have been imposed." 18 U.S.C. § 3614(a). Wilshusen has already been sentenced to the maximum statutory sentence. Since no sentence which "might originally have been imposed" could exceed the sentence which Wilshusen has already received, a failure to pay the fine will not result in any additional imprisonment under § 3614(a).

Under 18 U.S.C. § 3615, anyone who willfully fails to pay a fine may be fined an additional amount up to twice the amount of the unpaid balance or $10,000, whichever is greater, and may be imprisoned not more than one year, or both. 18 U.S.C. § 3515. A violation of this statute, however, constitutes a separate offense and is not a "direct consequence" of the entry of the guilty plea to the original charge. **See Dayton**, 604 F.2d at 937; **see also United States v. Payan**, 992 F.2d 1397-98 (5th Cir. 1993).

Even if the district court erred in not advising Wilshusen of the possibility that he would be required to serve an additional period of incarceration for failing to pay a fine, the error was harmless. Again, Wilshusen is a sophisticated attorney who must have known that the failure to pay a fine imposed in connection with a criminal conviction could have serious consequences, including possible imprisonment. **See Johnson**, ___F.2d at___.

Finally, Wilshusen argues that the district court failed to advise him that, if supervised release is revoked, he will not receive credit for time spent on supervised release prior to violating a condition of release. We will not consider this issue because it was not raised in Wilshusen's original brief or in his

supplemental brief. **Stephens v. C.I.T. Group/Equipment Financing, Inc.**, 955 F.2d 1023, 1026 (5th Cir. 1992).

III.

A.

Wilshusen contends that his sentence was improper for a number of reasons. He argues first that the district court failed to make factual findings on seven of his objections when it overruled those objections by stating "I note it. It has no effect on the guidelines."

In this case, the minimum sentence under the guideline range was greater than the maximum statutory sentence of five years. The guideline sentence was five years, under § 5G1.1(a), and the district court had no range of possible sentences from which to choose. Therefore, most of the disputed facts could not have affected the sentence ultimately imposed. **See Williams v. United States**, ___ U.S. ___, 112 S. Ct. 1112, 1120-21, 117 L. Ed. 2d 341 (1992).

Wilshusen contends that he raised three factual issues in his objections to the PSR which the district court failed to resolve in accordance with Rule 32: (a) the amount of laundered funds used to calculate his base offense level, (b) the characterization of his role in the conspiracy as that of a manager or supervisor, and (c) his ability to pay a fine.

Rule 32 is satisfied when the district court expressly adopts the fact-findings in the PSR and rules on each of the defendant's objections. **United States v. Sherbak**, 950 F.2d 1095, 1099 (5th

Cir. 1992). "Rule 32 does not require a catechismic regurgitation of each fact determined and each fact rejected when they are determinable from a PSR that the court has adopted by reference." **Id.** "When a defendant objects to his PSR but offers no rebuttal evidence to refute the facts, the district court is free to adopt the facts in the PSR without further inquiry." **Id.** at 1099-1100. With one modification, discussed below, the district court expressly adopted the PSR in its statement of reasons for the sentence which was attached to the judgment.

1.

The value of funds involved in a money laundering offense is a "specific offense characteristic" for purposes of the guideline determination under § 2S1.1(b). In a jointly undertaken criminal activity, whether or not charged as a conspiracy, "specific offense characteristics" are determined for each defendant on the same basis. The court should consider "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity, that occurred during the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense." § 1B1.3(a)(1)(B). "[T]he Guidelines strongly suggest that a defendant can be held accountable for acts of a conspiracy prior to his joining if those acts were reasonably foreseeable in connection with the criminal activity he agreed to jointly undertake." **United States v. Richardson**, 925 F.2d 112, 116 (5th Cir.) (internal quotations omitted), **cert. denied**, 111 S.Ct. 2868 (1991); **cf.**

United States v. O'Campo, 973 F.2d 1015, 1026 (1st Cir. 1992) (refusing to hold defendant responsible for acts of conspiracy which occurred before he joined the conspiracy).

Wilshusen argues that the district court should have made specific findings on the facts that were foreseeable to him. The district court's adoption of the PSR constituted a sufficient finding for purposes of Rule 32. **Sherbak**, 950 F.2d at 1099.

United States v. Webster, 960 F.2d 1301, 1309-10 (5th Cir.), **cert. denied**, 113 S.Ct. 355 (1992), relied on by Wilshusen, is inapposite. In **Webster**, rather than making an express finding on the facts foreseeable to defendant, the district court merely adopted the PSR. Reversal was required because the PSR did not contain a finding on this contested issue. **Id.** By contrast, the probation officer in the instant case found that Wilshusen knew of, and participated in, the transactions for which the court held him accountable.

The probation officer found that Wilshusen first became involved in the conspiracy in December 1988 or January 1989. Wilshusen actively conspired to launder funds beginning on February 14, 1989, and continuing through mid-summer 1990. A $1 million transfer to Jakarta, Indonesia was made in late-February. In early-March, a co-conspirator flew to Atlantic City, New Jersey, and laundered funds through a casino. Several days later, a co-conspirator attempted to launder $877,000 through a bank or financial institution located at the Isle of Jersey in Europe, and

a co-conspirator laundered an additional $100,000 through a bank in New Jersey.

Wilshusen then "arranged and attended a meeting in Dallas, Texas for the purpose of acquiring a contact person to assist in the laundering and concealment of the proceeds of the original pesos investment program." Several days later, Wilshusen "met with a conspirator in Las Vegas, Nevada to discuss the location of various funds and proceeds of the initial pesos exchange program to enable Gray and his associates to obtain control of such funds." Thereafter, additional funds were laundered.

The Probation Officer wrote the following response to Wilshusen's objection to paragraph 12 of the PSR:

> The breakdown of laundered amounts appears in Paragraphs 8, 9, and 12 of the Presentence Report. According to case agents, evidence presented at Gray's trial revealed that $877,000 was laundered through West Coast Consultants, $1.6 million was sent to Djakarta, Indonesia, $1 million was sent to Martin Weisburg in New York and $500,000 was sent to the El Paso account in the name of Jack Fairall. Regarding the defendant's involvement, **Wilshusen served as William Gray's legal counsel[4] and had knowledge of the laundered funds. He assisted Gray in answering questions of investors from the peso program, arranged a meeting in which Gray was introduced to undercover operatives who helped launder the money and attended meetings on Gray's behalf**. Case agents can testify as to Wilshusen's involvement.

PSR Addendum, 3-4 (emphasis added). At sentencing, the district court modified the findings in the PSR only to reflect that the sum sent to Indonesia was $1.006 million instead of $1.6 million.

The Probation Officer's findings were predicated upon

---

[4]**William Gray is a co-conspirator. The record on appeal has been supplemented with the transcript from Gray's trial.**

Wilshusen's **actual knowledge** and personal involvement in the listed transactions resulting from his position as Gray's legal counsel. The question of foreseeability is subsumed in the finding of actual knowledge. Wilshusen offered no evidence to prove that he was unaware of the transactions. By adopting the findings in the PSR, the district court made an express finding on the issue of foreseeability. The district court's finding was not clearly erroneous.

2.

The district court upwardly adjusted Wilshusen's offense level by three levels because of Wilshusen's supervisory role in the offense. Wilshusen challenges this upward adjustment. However, even if we accepted his contention, his offense level would be 26. That offense level, together with a criminal history category of I, would yield a sentencing range of 63 to 78 months. This would be higher than the 60 month maximum term of imprisonment available for the offense to which Wilshusen pleaded guilty, which is the sentence Wilshusen received. Therefore, any error committed by the district court would be harmless. **See** § 5G1.1(a).

3.

Wilshusen argues next that the district court failed to make a Rule 32 finding on his ability to pay the $100,000 fine.

> District courts are directed to impose a fine in all cases, unless the defendant establishes that he will be unable to pay. § 5E1.2(a). In determining the fine, the guidelines list seven factors for consideration, including "any evidence presented as to the defendant's ability to pay the fine (including the ability to pay over a period of time) in light of his earning capacity and financial resources[.]"

United States v. Fair, 979 F.2d 1037, 1040 (5th Cir. 1992) (quoting § 5E1.2(d)(2)). In this circuit, district courts are not required to make express findings with respect to the defendant's ability to pay. **Id.**; **United States v. Matovsky**, 935 F.2d 719, 722 (5th Cir. 1991).

The defendant has the burden of proving the inability to pay the fine. **Fair**, 979 F.2d at 1041. "If the defendant makes such a showing, the court may impose a lesser fine, or waive the fine altogether." **Id.** (citing § 5E1.2(a) and (f)). The defendant "may rely on the PSR to establish his inability to pay a fine." **Id.**

> When a sentencing court adopts a PSR which recites facts showing limited or no ability to pay a fine the government must then come forward with evidence showing that a defendant can in fact pay a fine before one can be imposed. For example, the government can point to evidence of assets concealed by the defendant, evidence of the future earning potential of the defendant, and even evidence of the wealth of the defendant's family.

Id. (internal citations omitted). If the Government makes such a showing, the district court has discretion to determine whether a fine should be assessed. **Id.** at 1042. The district court "should" give its reasons for departing from the PSR's recommendation on fines. **Id.**

Under the guidelines, the district court could have imposed a fine of between $15,000 and $150,000. With respect to Wilshusen's ability to pay a fine, the Probation Officer noted that Wilshusen was unemployed and that his only assets were $100 in cash and a watch valued at $100. Wilshusen also had between $140,000 and $150,000 in an Austrian bank account but those funds were tied up in litigation. Based on the funds in the Austrian bank account,

the Probation Officer concluded that Wilshusen has the ability to pay a fine.

Wilshusen argues that the question whether he had access to the off-shore assets was "hotly contested." In fact, Wilshusen merely stated that "he does not have in excess of $100,000 in proceeds in off-shore assets and is unable to pay a fine. He is, in fact, unable to pay for basic telephone service." In the PSR, the Probation Officer reported:

> With respect to these assets, the defendant advised he and Alstir McColl, a British attorney, representing a firm called Nikon Trust, were putting together a $200 million loan to a computer company in the State of Washington. The money was set up for a commitment fee. According to the defendant, McColl was arrested on a similar transaction in Switzerland as he was taking commitment fees, but not providing the loans. The defendant reports the Austrian bank advised him that the account had been seized and that he could seek refundment of the money through the Austrian courts. The defendant states he has an attorney pursuing this matter.

PSR p. 67. Wilshusen did not specifically dispute any of these facts or offer any evidence to show that he would not ultimately recover the funds or that his inability to pay current expenses was more than a problem of liquidity which did not reflect his future ability to pay a fine. Although Wilshusen speculated that the Austrian funds will be subject to forfeiture as proceeds wrongfully received in this case, he did not contend that the Government had instituted forfeiture proceedings. The district court was entitled to find that Wilshusen did not carry his burden to show that he is unable to pay the fine.[5] Furthermore, although the Probation

---

[5]Wilshusen argues for the first time in his motion to supplement his reply brief that he had no right to the funds in the

Officer did not base his conclusion on this fact, the district court was entitled to consider Wilshusen's future earning potential. **See United States v. O'Banion**, 943 F.2d 1422, 1432 n.11 (5th Cir. 1991). ("Even if O'Banion had a negative net worth at the time of sentencing, the sentencing judge could base his sentencing determination on O'Banion's future ability to earn."). Wilshusen is an attorney with significant experience as entrepreneur and international businessman. Although Wilshusen argues that his conviction will probably result in the loss of his license to practice law, he would not be the first disbarred lawyer who succeeded as an entrepreneur.

B.

Wilshusen contends next that his Fourteenth Amendment due process rights were violated by the district court's reliance on the evidence introduced at Gray's trial. (Relying on **United States v. Castellanos**, 904 F.2d 1490, 1496 (11th Cir. 1990) ("evidence presented at the trial of another may not -- without more -- be used to fashion a defendant's sentence if the defendant objects") (emphasis in original)). In **United States v. Ramirez**, 963 F.2d 693, 708 (5th Cir.), **cert. denied**, 113 S.Ct. 388 (1992), this Court stated that "**Castellanos** stands for no more than the proposition

---

account and that his legal action is not likely to succeed. Somewhat inconsistently, he also argues that he was the victim of the fraud perpetrated by McColl. These issues are not reviewable because they do not involve purely legal questions. **Varnado v. Collins**, 920 F.2d 320, 321 (5th Cir. 1991) ("Issues raised for the first time on appeal are not reviewable by this court unless they involve purely legal questions and failure to consider them would result in manifest injustice." (internal quotations omitted)).

that the sentencing court must comply with the procedures contained in § 6A1.3, regardless of the source of the information used to determine defendant's sentence."

Under § 6A1.3,

> When any factor important to the sentencing determination is reasonably in dispute, the parties shall be given an adequate opportunity to present information to the court regarding that factor. In resolving any reasonable dispute concerning a factor important to the sentencing determination, the court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy.

§ 6A1.3. Wilshusen argues that he was denied an adequate opportunity to present information to the district court to rebut the trial testimony because he was not provided with a copy of the multi-volume transcript until shortly before the sentencing hearing. Wilshusen further argues that, even if he had obtained the trial transcript at an earlier date, he could not have rebutted it because the portions of the transcript relied upon by the Probation Officer and the district court were never specifically identified.

These arguments are without merit. The trial itself was not a "factor important to the sentencing determination" and Wilshusen was not entitled to an opportunity to rebut all of the evidence introduced at the trial. Wilshusen had an opportunity to rebut the fact findings contained in the PSR and he took advantage of that opportunity. **See** Fed. R. Crim. P. 32(c)(3)(A) (requiring disclosure of the PSR at least 10 days prior to the sentencing hearing).

As was previously discussed, the district court found that Wilshusen had actual knowledge of the transactions identified by virtue of his position as Gray's attorney. The Probation Officer's findings, in that regard, were not based solely on the trial testimony but were also based upon statements provided by the case agents. The Probation Officer's findings were supported by sufficient indicia of reliability and the district court's adoption of the Probation Officer's findings was not clearly erroneous.

C.

Wilshusen contends that the district court erred by failing to award him a two-level reduction in offense level for acceptance of responsibility. The district court denied the reduction based upon Wilshusen's failure to accept responsibility for more than $330,000 of the loss. Wilshusen argues that the district court erred when it assessed him with responsibility for these additional sums and compounded the error when it refused to give him the acceptance of responsibility reduction. Wilshusen's persistent refusal to accept the responsibility for these losses provided ample justification for the court's refusal to grant the two point reduction.

The sentencing court must reduce the defendant's offense level by 2 levels, "[i]f the defendant clearly demonstrates a recognition and affirmative acceptance of personal responsibility for his criminal conduct . . . ." § 3E1.1(a). The district court's determination whether the defendant has accepted responsibility within the meaning of 3E1.1 is entitled to even greater deference

than that accorded under a clearly erroneous standard of review. **United States v. Mourning**, 914 F.2d 699, 705 (5th Cir. 1990).

Among the factors to be considered by the district court in determining whether to award the two-level reduction for acceptance of responsibility is whether the defendant has truthfully admitted, or has not falsely denied, any additional relevant conduct for which he is accountable under § 1B1.3 (Relevant Conduct). § 3E1.1, comment. (1(a)). Because the district court properly held Wilshusen accountable under § 1B1.3 for the losses occasioned by the acts of his co-conspirators, and Wilshusen persisted in denying his responsibility for those losses, the district court's refusal to award the two-level reduction for acceptance of responsibility was not clearly erroneous.

IV.

For the reasons stated above, we affirm Wilshusen's conviction and sentence.

AFFIRMED.