



1 **WECHSLER, Judge.**

2 {1} The State appeals from the district court’s order dismissing the charge of  
3 commercial burglary brought against Defendant. After first proposing to reverse, this  
4 Court issued a stay pending our decision in *State v. Archuleta*, \_\_\_-NMCA-\_\_\_, \_\_\_  
5 P.3d \_\_\_ (No. 32,794, Oct. 27, 2014), *cert. granted*,  
6 2015-NMCERT-\_\_\_ (No. 35,005, Jan. 26, 2015), the first  
7 of many cases raising the same issue relative to the charge of commercial burglary.  
8 Once the opinion in *Archuleta* was issued, we relied on that opinion, lifted the stay,  
9 and issued a second notice of proposed summary disposition, this time proposing to  
10 affirm. [Ct. App. file]

11 {2} The State has filed a response objecting to the second notice and requesting  
12 that we hold this appeal in abeyance or provide the State with a reasonable  
13 opportunity to seek guidance from the New Mexico Supreme Court regarding all  
14 pending appeals controlled by our opinion in *Archuleta*. [MIO 1-2] We have provided  
15 the State with such an opportunity, and the Supreme Court has denied the State’s  
16 request for a stay or another remedy that would suspend the precedential value of  
17 *Archuleta*. Thus, pursuant to Rule 12-405(C) NMRA, we apply *Archuleta*. See Rule  
18 12-405(C) (“A petition for a writ of certiorari filed pursuant to Rule 12-502 NMRA  
19 or a Supreme Court order granting the petition does not affect the precedential value

1 of an opinion of the Court of Appeals, unless otherwise ordered by the Supreme  
2 Court.”).

3 {3} In its response to our notice, the State simply objects to our proposed  
4 disposition and indicates it is unable to provide any additional facts or legal argument  
5 in response to the proposed disposition. [MIO 1, 3] We continue to believe there are  
6 no material factual or legal distinctions between this case and our opinion in  
7 *Archuleta*. Therefore, for the reasons stated in our second notice of proposed  
8 disposition, we affirm the district court’s order granting Defendant’s motion to  
9 dismiss the charge of commercial burglary.

10 {4} **IT IS SO ORDERED.**

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**JAMES J. WECHSLER, Judge**

13 **WE CONCUR:**

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**JONATHAN B. SUTIN, Judge**

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**M. MONICA ZAMORA, Judge**