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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

2 STATE OF NEW MEXICO,

Plaintiff-Appellant,

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4 v. **NO. 32,795**

5 TYJUAN DAVIDSON,

Defendant-Appellee.

7 APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY 8 Michael Martinez, District Judge

- 9 Hector H. Balderas, Attorney General
- 10 Margaret McLean, Assistant Attorney General
- 11 Santa Fe, NM
- 12 for Appellant
- 13 Jorge A. Alvarado, Chief Public Defender
- 14 Kimberly Chavez Cook, Assistant Appellate Defender
- 15 Santa Fe, NM
- 16 for Appellee

17 MEMORANDUM OPINION

WECHSLER, Judge.

The State appeals from the district court's order dismissing the charge of 2 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-___, __ ___ (No. 32,794, Oct. 27, 2014), cert. granted, 5 P.3d 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. 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 affirm. [Ct. App. file] 10 The State has filed a response objecting to the second notice and requesting 11 **{2}** 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	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.
11	
12	JAMES J. WECHSLER, Judge
13	WE CONCUR:
14 15	JONATHAN B. SUTIN, Judge
16 17	M. MONICA ZAMORA, Judge