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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

2 STATE OF NEW MEXICO,

Plaintiff-Appellant,

4 v.

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NO. 32,797

5 ELIZABETH CUFFEE,

6 Defendant-Appellee.

7 APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY 8 Ross Sanchez, 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

MEMORANDUM OPINION

17

1 WECHSLER, Judge.

2 The State appeals from the district court's order dismissing the indictment **{1}** 3 against Defendant for the charge of commercial burglary. Originally, we issued a 4 notice of proposed summary disposition, proposing to reverse. Defendant filed a 5 memorandum in opposition to our notice. Thereafter, we issued a stay pending our 6 decision in *State v. Archuleta*, ____-NMCA-___, ___P.3d ____(No. 32,794, Oct. 27, 7 2014), cert. granted, 2015-NMCERT-___ (No. 35,005, 8 Jan. 26, 2015), the first of many cases raising the same issue relative to the charge of commercial burglary. Relying on our opinion in Archuleta, we lifted the stay 9 and issued a second notice, proposing to affirm. The State has filed a response, 10 objecting to our second notice and requesting that we hold this appeal in abeyance or 11 provide the State with a reasonable opportunity to seek guidance from the New 12 13 Mexico Supreme Court on all pending appeals controlled by our opinion in Archuleta. 14 [MIO 1-2] We have provided the State with such an opportunity, and the Supreme Court has denied the State a stay or other remedy that would suspend the precedential 15 value of Archuleta. Thus, pursuant to Rule 12-405(C) NMRA, we apply Archuleta. 16 17 See Rule 12-405(C) ("A petition for a writ of certiorari filed pursuant to Rule 12-502 18 NMRA or a Supreme Court order granting the petition does not affect the precedential 19 value of an opinion of the Court of Appeals, unless otherwise ordered by the Supreme

1	Court.").
2	{2} In its response to our second notice, the State simply objects to our proposed
3	disposition without elaboration. [MIO 1] We continue to believe that there are no
4	material factual distinctions to remove this case from the control of our opinion in
5	Archuleta. For the reasons stated in our second notice, we affirm the district court's
6	order granting Defendant's motion to dismiss the commercial burglary charge.
7	{3} IT IS SO ORDERED.
8 9	JAMES J. WECHSLER, Judge
10	WE CONCUR:
11 12	TIMOTHY L. GARCIA, Judge
13 14	J. MILES HANISEE, Judge