



1 **WECHSLER, Judge.**

2 {1} The State appeals from the district court’s order dismissing the indictment  
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  
9 charge of commercial burglary. Relying on our opinion in *Archuleta*, we lifted the stay  
10 and issued a second notice, proposing to affirm. The State has filed a response,  
11 objecting to our second notice and requesting that we hold this appeal in abeyance or  
12 provide the State with a reasonable opportunity to seek guidance from the New  
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  
15 Court has denied the State a stay or other remedy that would suspend the precedential  
16 value of *Archuleta*. Thus, pursuant to Rule 12-405(C) NMRA, we apply *Archuleta*.  
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.**

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**JAMES J. WECHSLER, Judge**

10 **WE CONCUR:**

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12 **TIMOTHY L. GARCIA, Judge**

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14 **J. MILES HANISEE, Judge**