

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3           Plaintiff-Appellee,

4 v.

**NO. 33,059**

5 **GABRIEL GUZMAN REYES,**

6           Defendant-Appellant,

7 **APPEAL FROM THE DISTRICT COURT OF DONA AÑA COUNTY**

8 Fernando R. Macias, District Judge

9 Hector H. Balderas, Attorney General

10 Margaret McLean, Assistant Attorney General

11 Santa Fe, NM

12 for Appellee

13 Jorge A. Alvarado, Chief Public Defender

14 Sergio Viscoli, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17   **MEMORANDUM OPINION**

18 **GARCIA, Judge.**

1 {1} Defendant appeals from a conviction for burglary, entered pursuant to a plea  
2 agreement in which he reserved the right to appeal. On November 19, 2014, we issued  
3 a second notice of proposed summary disposition in which we proposed to reverse.

4 {2} On February 9, 2015, the State filed a response with this Court, indicating that  
5 it would be filing a motion for stay with the New Mexico Supreme Court and  
6 requesting that we await a decision from that Court on the State's motion before  
7 taking further action in this case. We have done so. The New Mexico Supreme Court  
8 has recently denied the State's motion.

9 {3} Although it is less than entirely clear, the State's response may incorporate a  
10 similar request that this Court stay or hold this case in abeyance pending a decision  
11 from the New Mexico Supreme Court in *State v. Archuleta*, \_\_\_-NMCA-\_\_\_, \_\_\_  
12 P.3d. \_\_\_, (No. 32,794, Oct. 27, 2014), *cert. granted*, \_\_\_-NMCERT-\_\_\_ (No.  
13 35,005, Jan. 26, 2015). To the extent that the such request is made, it is denied.

14 {4} Turning to the merits, we previously opined that Defendant's conviction for  
15 burglary cannot stand in light of this Court's decision in *Archuleta*. The State indicates  
16 that it "is unable to provide any additional facts or other legal argument in response  
17 to the proposed disposition."

18 {5} Accordingly, for the reasons stated, we reverse and remand for further  
19 proceedings consistent herewith.

1 {6} **IT IS SO ORDERED.**

2

3

---

**TIMOTHY L. GARCIA, Judge**

4 **WE CONCUR:**

5

---

**MICHAEL E. VIGIL, Chief Judge**

7

---

**RODERICK T. KENNEDY, Judge**