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

2 **STATE OF NEW MEXICO,**

3           Plaintiff-Appellant,

4 v.

**NO. 33,158**

5 **COTY E. JIMENEZ,**

6           Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

8 **Darren M. Kugler, District Judge**

9 Hector H. Balderas, Attorney General

10 Margaret E. McLean, Assistant Attorney General

11 Santa Fe, NM

12 for Appellant

13 Jorge A. Alvarado, Chief Public Defender

14 Sergio Viscoli, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellee

17   **MEMORANDUM OPINION**

18 **VIGIL, Judge.**

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

10 {2} The State has filed a response objecting to the notice and requesting that we  
11 hold this appeal in abeyance or provide the State with a reasonable opportunity to seek  
12 guidance from the New Mexico Supreme Court regarding all pending appeals  
13 controlled by our opinion in *Archuleta*. [MIO 1-2] We have provided the State with  
14 such an opportunity, and the Supreme Court has denied the State’s request for a stay  
15 or other remedy that would suspend the precedential value of *Archuleta*. Thus,  
16 pursuant to Rule 12-405(C) NMRA, we apply *Archuleta*. See Rule 12-405(C) (“A  
17 petition for a writ of certiorari filed pursuant to Rule 12-502 NMRA or a Supreme  
18 Court order granting the petition does not affect the precedential value of an opinion  
19 of the Court of Appeals, unless otherwise ordered by the Supreme Court.”).

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

8 {4} **IT IS SO ORDERED.**

9  
10 \_\_\_\_\_  
**MICHAEL E. VIGIL, Chief Judge**

11 **WE CONCUR:**

12 \_\_\_\_\_  
13 **CYNTHIA A. FRY, Judge**

14 \_\_\_\_\_  
15 **J. MILES HANISEE, Judge**