

1 {1} Geneva Garcia (Defendant) appeals the district court’s order denying her
2 motion to dismiss the charge of commercial burglary. Defendant entered a conditional
3 plea, reserving for appeal the issues raised in her motion to dismiss. [RP 52] This
4 Court issued a stay before addressing the merits of the appeal, pending our decision
5 in *State v. Archuleta*, ___-NMCA-___, ___ P.3d ___ (No. 32,794, Oct. 27, 2014),
6 *cert. granted*, 2015–NMCERT–___ (No. 35,005, Jan.
7 26, 2015), the first of many cases raising the same issue relative to the charge of
8 commercial burglary. On the basis of that opinion, we lifted the stay and issued a
9 notice of proposed summary disposition, proposing to reverse on December 4, 2014.
10 The State has responded with an objection to our notice and a request to hold this
11 appeal in abeyance or provide the State with a reasonable opportunity to seek
12 guidance from the New Mexico Supreme Court on all pending appeals controlled by
13 our Opinion in *Archuleta*. [MIO 1-2] We have provided the State with such an
14 opportunity, and the Supreme Court has denied the State a stay or other remedy that
15 would suspend the precedential value of *Archuleta*. Thus, pursuant to Rule 12-405(C)
16 NMRA, we apply *Archuleta*. See Rule 12-405(C) (“A petition for a writ of certiorari
17 filed pursuant to Rule 12-502 NMRA or a Supreme Court order granting the petition
18 does not affect the precedential value of an opinion of the Court of Appeals, unless
19 otherwise ordered by the Supreme Court.”).

1 {2} In its response to our notice, the State simply objects to our proposed
2 disposition without elaboration. [MIO 1] We continue to believe that there are no
3 material factual distinctions to remove this case from the control of our Opinion in
4 *Archuleta*. For the reasons stated in our notice, we reverse Defendant's conviction for
5 commercial burglary.

6 {3} **IT IS SO ORDERED.**

7
8

RODERICK T. KENNEDY, Judge

9 **WE CONCUR:**

10
11

MICHAEL D. BUSTAMANTE, Judge

12
13

LINDA M. VANZI, Judge