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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. 33,389
5	THOMAS HOBBS,
6	Defendant-Appellee,
	APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY John A. Dean, Jr., District Judge
10	Hector H. Balderas, Attorney General Margaret McLean, Assistant Attorney General Santa Fe, NM
12	for Appellant
	Jorge A. Alvarado, Chief Public Defender Santa Fe, NM
15	for Appellee
16	MEMORANDUM OPINION
17	ZAMORA, Judge.
18	The State appeals from the district court's order granting Defendant's motion
19	to dismiss the charge of commercial burglary. This Court issued a stay before
20	addressing the merits of the State's appeal, pending our decision in <i>State v. Archuleta</i> ,

-NMCA-____, ____ P.3d ____ (No. 32,794, Oct. 27, 2014), cert. granted, 2015-NMCERT-___ (No. 35,005, 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 and issued a notice of proposed summary disposition, proposing to affirm on November 18, 2014. The State has filed a response, objecting to our notice and requesting that we hold this appeal in abeyance or provide the State with a reasonable opportunity to seek guidance from the New Mexico Supreme Court on all pending appeals controlled by our opinion in Archuleta. [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 value of *Archuleta*. 11 Thus, pursuant to Rule 12-405(C) NMRA, we apply Archuleta. See Rule 12-405(C) ("A petition for a writ of certiorari filed pursuant to Rule 12-502 NMRA or a Supreme Court order granting the petition does not affect the precedential value of an opinion of the Court of Appeals, unless otherwise ordered by the Supreme Court."). In its response to our notice, the State simply objects to our proposed 15 **{2}** disposition without elaboration. [MIO 1] We continue to believe that there are no material factual distinctions to remove this case from the control of our opinion in 18 Archuleta. For the reasons stated in our notice, we affirm the district court's order 19 granting Defendant's motion to dismiss the commercial burglary charge.

1	{3} IT IS SO ORDERED.
2 3	M. MONICA ZAMORA, Judge
4	WE CONCUR:
5	CYNTHIA A. FRY, Judge
7	
8	RODERICK T. KENNEDY, Judge
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