

1 ____-NMCA-____, ____ P.3d ____ (No. 32,794, Oct. 27, 2014), *cert. granted*,
2 2015-NMCERT-____ (No. 35,005, Jan. 26, 2015), the first of many cases raising the
3 same issue relative to the charge of commercial burglary. Relying on our opinion in
4 *Archuleta*, we lifted the stay and issued a notice of proposed summary disposition,
5 proposing to affirm on November 18, 2014. The State has filed a response, objecting
6 to our notice and requesting that we hold this appeal in abeyance or provide the State
7 with a reasonable opportunity to seek guidance from the New Mexico Supreme Court
8 on all pending appeals controlled by our opinion in *Archuleta*. [MIO 1-2] We have
9 provided the State with such an opportunity, and the Supreme Court has denied the
10 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)
12 (“A petition for a writ of certiorari filed pursuant to Rule 12-502 NMRA or a Supreme
13 Court order granting the petition does not affect the precedential value of an opinion
14 of the Court of Appeals, unless otherwise ordered by the Supreme Court.”).

15 {2} In its response to our notice, the State simply objects to our proposed
16 disposition without elaboration. [MIO 1] We continue to believe that there are no
17 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.**

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M. MONICA ZAMORA, Judge

4 **WE CONCUR:**

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CYNTHIA A. FRY, Judge

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RODERICK T. KENNEDY, Judge