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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. 33,490

5 **DELAYNA CHICO,**

6 Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

8 **John A. Dean, Jr., District Judge**

9 Hector H. Balderas, Attorney General

10 Margaret McLean, Assistant Attorney General

11 Santa Fe, NM

12 for Appellant

13 Jorge A. Alvarado, Chief Public Defender

14 Santa Fe, NM

15 for Appellee

16 **MEMORANDUM OPINION**

17 **ZAMORA, Judge.**

18 {1} The State appeals from the district court's order dismissing a charge of
19 commercial burglary. This Court issued a stay before addressing the merits of the

1 State’s appeal, pending our decision in *State v. Archuleta*, ___-NMCA-___, ___ P.3d
2 ___ (No.32,794, Oct. 27, 2014), *cert. granted*, 2015–NMCERT–____
3 (No. 35,005, Jan. 26, 2015), the first of many cases raising the same
4 issue relative to the charge of commercial burglary. Relying on our opinion in
5 *Archuleta*, we lifted the stay and issued a notice of proposed summary disposition,
6 proposing to affirm on December 19, 2014. [Ct. App. file] The State has filed a
7 response, objecting to our notice and requesting that we hold this appeal in abeyance
8 or provide the State with a reasonable opportunity to seek guidance from the New
9 Mexico Supreme Court on all pending appeals controlled by our opinion in *Archuleta*.
10 [MIO 1-2] We have provided the State with such an opportunity, and the Supreme
11 Court has denied the State a stay or other remedy that would suspend the precedential
12 value of *Archuleta*. Thus, pursuant to Rule 12-405(C) NMRA, we apply *Archuleta*.
13 *See* Rule 12-405(C) (“A petition for a writ of certiorari filed pursuant to Rule 12-502
14 NMRA or a Supreme Court order granting the petition does not affect the precedential
15 value of an opinion of the Court of Appeals, unless otherwise ordered by the Supreme
16 Court.”).

17 {2} In its response to our notice, the State simply objects to our proposed
18 disposition without elaboration. [MIO 1] We continue to believe that there are no
19 material factual distinctions to remove this case from the control of our opinion in

1 *Archuleta*. For the reasons stated in our notice, we affirm the district court's order
2 granting Defendant's motion to dismiss.

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

4

5

M. MONICA ZAMORA, Judge

6 **WE CONCUR:**

7

8 **MICHAEL E. VIGIL, Chief Judge**

9

10 **JONATHAN B. SUTIN, Judge**