

1 **HANISEE, Judge.**

2 {1} Defendant appeals from the district court’s order denying her motion to dismiss
3 the charge of commercial burglary. Defendant entered a conditional plea reserving for
4 appeal the issues raised in her motion to dismiss. On the basis of this Court’s opinion
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), we issued a notice of proposed summary disposition, proposing to
8 reverse. The State has responded with an objection to our notice and a request to hold
9 this appeal in abeyance or provide the State with a reasonable opportunity to seek
10 guidance from the New Mexico Supreme Court on all pending appeals controlled by
11 our opinion in *Archuleta*. [MIO 1-2] We have provided the State with such an
12 opportunity, and the Supreme Court has denied the State a stay or other remedy that
13 would suspend the precedential value of *Archuleta*. Thus, pursuant to Rule 12-405(C)
14 NMRA, we apply *Archuleta*. *See* Rule 12-405(C) (“A petition for a writ of certiorari
15 filed pursuant to Rule 12-502 NMRA or a Supreme Court order granting the petition
16 does not affect the precedential value of an opinion of the Court of Appeals, unless
17 otherwise ordered by the Supreme Court.”).

18 {2} In its response to our notice, the State simply objects to our proposed
19 disposition without elaboration. [MIO 1, 3] We continue to believe that there are no

1 material factual distinctions to remove this case from the control of our opinion in
2 *Archuleta*. For the reasons stated in our notice, we reverse Defendant's conviction for
3 commercial burglary.

4 {3} **IT IS SO ORDERED.**

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J. MILES HANISEE, Judge

7 **WE CONCUR:**

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MICHAEL D. BUSTAMANTE, Judge

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JONATHAN B. SUTIN, Judge