



1 {1} The State appeals from the district court’s order dismissing the indictment  
2 against Defendant for the charge of commercial burglary. This Court issued a stay  
3 before addressing the merits of the State’s appeal, pending our decision in *State v.*  
4 *Archuleta*, \_\_\_\_\_-NMCA-\_\_\_\_, \_\_\_ P.3d \_\_\_ (No. 32,794, Oct. 27, 2014), *cert.*  
5 *granted*, 2015–NMCERT–\_\_\_\_\_ (No. 35,005, Jan. 26,  
6 2015), the first of many cases raising the same issue relative to the charge of  
7 commercial burglary. Relying on our opinion in *Archuleta*, we lifted the stay and  
8 issued a notice of proposed summary disposition, proposing to affirm on December  
9 23, 2014. [Ct. App. file] The State has filed a response, objecting to our notice and  
10 requesting that we hold this appeal in abeyance or provide the State with a reasonable  
11 opportunity to seek guidance from the New Mexico Supreme Court on all pending  
12 appeals controlled by our opinion in *Archuleta*. [MIO 1-2] We have provided the State  
13 with such an opportunity, and the Supreme Court has denied the State a stay or other  
14 remedy that would suspend the precedential value of *Archuleta*. Thus, pursuant to  
15 Rule 12-405(C) NMRA, we apply *Archuleta*. *See* Rule 12-405(C) (“A petition for a  
16 writ of certiorari filed pursuant to Rule 12-502 NMRA or a Supreme Court order  
17 granting the petition does not affect the precedential value of an opinion of the Court  
18 of Appeals, unless 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 affirm the district court's order  
5 granting Defendant's motion to dismiss the commercial burglary charge.

6 {3} **IT IS SO ORDERED.**  
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**CYNTHIA A. FRY, Judge**

10 **WE CONCUR:**

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12 **JONATHAN B. SUTIN, Judge**

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14 **MICHAEL D. BUSTAMANTE, Judge**