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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 **v.**

No. 33,799

5 **MICHAEL ALDACO,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY**

8 **James L. Shuler, District Judge**

9 Hector H. Balderas, Attorney General

10 Margaret McLean, Assistant Attorney General

11 Santa Fe, NM

12 for Appellee

13 Jorge A. Alvarado, Chief Public Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **SUTIN, Judge.**

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

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

4 _____
5 **JONATHAN B. SUTIN, Judge**

6 **WE CONCUR:**

7 _____
8 **JAMES J. WECHSLER, Judge**

9 _____
10 **MICHAEL D. BUSTAMANTE, Judge**