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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. 33,811**

5       **MICHAEL ALDACO,**

6             Defendant-Appellant.

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

8       **Jane Shuler Gray, 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 from the district court’s judgment and sentence, convicting  
2 him of commercial burglary. [RP 112] The judgment and sentence were entered after  
3 a non-jury trial and following the district court’s decision to deny Defendant’s motion  
4 to strike the commercial burglary charge. [DS]

5 {2} On the basis of this Court’s opinion in *State v. Archuleta*, \_\_\_\_-NMCA-\_\_\_\_,  
6 \_\_\_\_ P.3d \_\_\_\_ (No. 32,794, Oct. 27, 2014), *cert. granted*, 2015-NMCERT-\_\_\_\_, \_\_\_\_ P.3d  
7 \_\_\_\_ (No. 35,005, Jan. 26, 2015), we issued a notice of proposed summary disposition,  
8 proposing to reverse. The State has responded with an objection to our notice and a  
9 request to 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 {3} 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 for  
3 commercial burglary.

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

5 \_\_\_\_\_  
6 **JONATHAN B. SUTIN, Judge**

7 **WE CONCUR:**

8 \_\_\_\_\_  
9 **LINDA M. VANZI, Judge**

10 \_\_\_\_\_  
11 **J. MILES HANISEE, Judge**