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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

2 STATE OF NEW MEXICO,

Plaintiff-Appellee,

4 v.

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NO. 33,994

5 AUDREY MARTINEZ,

6 Defendant-Appellant.

7 APPEAL FROM THE DISTRICT COURT OF RIO ARRIBA COUNTY 8 Mary Marlowe-Sommer, 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 Sergio Viscoli, Appellate Defender
- 15 Santa Fe, NM

16 for Appellant

MEMORANDUM OPINION

17

1 WECHSLER, Judge.

Defendant appeals from the district court's order denying her motion to dismiss 2 **{1}** 3 the charge of commercial burglary. This appeal arises from two separate district court cases that were addressed in a single plea agreement. Defendant entered a conditional 4 plea reserving for appeal the issues raised in her motion to dismiss. [DS 2; RP 64 5 (00265), RP 70 (00366)] This Court issued a calendar notice proposing to reverse 6 based on our decision in State v. Archuleta, ___-NMCA-___, ___ P.3d ____ (No. 7 8 32,794, Oct. 27, 2014), cert. granted, 2015-NMCERT-___ (No. 35,005, Jan. 26, 2015). The State has filed a response, objecting to our 9 10 notice and requesting that we hold this appeal in abeyance or provide the State with a reasonable opportunity to seek guidance from the New Mexico Supreme Court on 11 12 all pending appeals controlled by our opinion in Archuleta. [MIO 1-3] We have 13 provided the State with such an opportunity, and the Supreme Court has denied the 14 State a stay or other remedy that would suspend the precedential value of Archuleta. 15 Thus, pursuant to Rule 12-405(C) NMRA, we apply Archuleta. See Rule 12-405(C) ("A petition for a writ of certiorari filed pursuant to Rule 12-502 NMRA or a Supreme 16 Court order granting the petition does not affect the precedential value of an opinion 17 18 of the Court 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, 3] 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 reverse Defendant's conviction for
5	commercial burglary.
6	{3} IT IS SO ORDERED.
7 8	JAMES J. WECHSLER, Judge
9	WE CONCUR:
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11	MICHAEL E. VIGIL, Chief Judge
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13	LINDA M. VANZI, Judge