

1 **WECHSLER, Judge.**

2 {1} Defendant appeals from the district court’s order denying her motion to dismiss
3 the charge of commercial burglary. This appeal arises from two separate district court
4 cases that were addressed in a single plea agreement. Defendant entered a conditional
5 plea reserving for appeal the issues raised in her motion to dismiss. [DS 2; RP 64
6 (00265), RP 70 (00366)] This Court issued a calendar notice proposing to reverse
7 based on our decision in *State v. Archuleta*, ___-NMCA-___, ___ P.3d ___ (No.
8 32,794, Oct. 27, 2014), *cert. granted*, 2015–NMCERT–_____ (No.
9 35,005, Jan. 26, 2015). The State has filed a response, objecting to our
10 notice and requesting that we hold this appeal in abeyance or provide the State with
11 a reasonable opportunity to seek guidance from the New Mexico Supreme Court on
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)
16 (“A petition for a writ of certiorari filed pursuant to Rule 12-502 NMRA or a Supreme
17 Court order granting the petition does not affect the precedential value of an opinion
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.**

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JAMES J. WECHSLER, Judge

9 **WE CONCUR:**

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MICHAEL E. VIGIL, Chief Judge

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LINDA M. VANZI, Judge