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

2       **STATE OF NEW MEXICO,**

3             Plaintiff-Appellant,

4       v.

**NO. 34,009**

5       **JEFFREY WOODARD,**

6             Defendant-Appellee.

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

8       **Charles W. Brown, District Judge**

9       Hector H. Balderas, Attorney General

10       Margaret McLean, Assistant Attorney General

11       Santa Fe, NM

12       for Appellant

13       Jorge A. Alvarado, Chief Public Defender

14       Santa Fe, NM

15       for Appellee

16                                       **MEMORANDUM OPINION**

17       **VANZI, Judge.**

18       {1}     The State appeals from the district court's order dismissing charges of  
19       commercial burglary and conspiracy to commit commercial burglary. This Court

1 issued a stay before addressing the merits of the State’s appeal, pending our decision  
2 in *State v. Archuleta*, \_\_\_-NMCA-\_\_\_, \_\_\_ P.3d \_\_\_ (No. 32,794, Oct. 27, 2014),  
3 *cert. granted*, 2015-NMCERT-\_\_\_ (No. 35,005, Jan. 26, 2015), the first of many cases  
4 raising the same issue relative to the charge of commercial burglary. Relying on our  
5 opinion in *Archuleta*, we lifted the stay and issued a notice of proposed summary  
6 disposition, proposing to affirm on December 19, 2014. [CN 1] The State has filed a  
7 response, objecting to our notice and requesting that we hold this appeal in abeyance  
8 or provide the State with a reasonable opportunity to seek guidance from the New  
9 Mexico Supreme Court on all pending appeals controlled by our opinion in *Archuleta*.  
10 [MIO 1-2] We have provided the State with such an opportunity, and the Supreme  
11 Court has denied the State a stay or other remedy that would suspend the precedential  
12 value of *Archuleta*. Thus, pursuant to Rule 12-405(C) NMRA, we apply *Archuleta*.  
13 *See* Rule 12-405(C) (“A petition for a writ of certiorari filed pursuant to Rule 12-502  
14 NMRA or a Supreme Court order granting the petition does not affect the precedential  
15 value of an opinion of the Court of Appeals, unless otherwise ordered by the Supreme  
16 Court.”).

17 {2} In its response to our notice, the State simply objects to our proposed  
18 disposition without elaboration. [MIO 1] We continue to believe that there are no  
19 material factual distinctions to remove this case from the control of our opinion in

1 *Archuleta*. For the reasons stated in our notice, we affirm the district court's order  
2 granting Defendant's motion to dismiss.

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

4 \_\_\_\_\_  
5 **LINDA M. VANZI, Judge**

6 **WE CONCUR:**

7 \_\_\_\_\_  
8 **CYNTHIA A FRY, Judge**

9 \_\_\_\_\_  
10 **M. MONICA ZAMORA, Judge**