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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. 34,049

5 **TERRISON SHORTY,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

8 **William C. Birdsall, 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 **WECHSLER, Judge.**

1 {1} Defendant appeals from the district court’s order denying his motion to dismiss
2 the sole charge of commercial burglary. [DS 3; RP 52, 61] Defendant entered a
3 conditional plea reserving for appeal the issues raised in his motion to dismiss. [RP
4 43-44]

5 {2} On the basis of this Court’s opinion in *State v. Archuleta*, 2014-NMCA-____,
6 ____ P.3d ____ (No. 32,794, Oct. 27, 2014), *cert. granted*, 2015-NMCERT-____, (No.
7 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 State
12 with such an opportunity, and the Supreme Court has denied the State a stay or other
13 remedy that would suspend the precedential value of *Archuleta*. Thus, pursuant to
14 Rule 12-405(C) NMRA, we apply *Archuleta*. *See* Rule 12-405(C) (“A petition for a
15 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.**

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7

JAMES J. WECHSLER, Judge

8 **WE CONCUR:**

9

10 **MICHAEL D. BUSTAMANTE, Judge**

11

12 **CYNTHIA A. FRY, Judge**