

1 **WECHSLER, Judge.**

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

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

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JAMES J. WECHSLER, Judge

6 **WE CONCUR:**

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CYNTHIA A. FRY, Judge

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TIMOTHY L. GARCIA, Judge