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#### IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

	STA'	TE OF	NEW	<b>MEXICO</b>
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Plaintiff-Appellant,

4 v. NO. 34,072

### 5 RAUL RALPH GARZA,

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

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- 12 for Appellant
- 13 Jorge A. Alvarado, Chief Public Defender
- 14 Sergio Viscoli, Appellate Defender
- 15 Santa Fe, NM
- 16 for Appellee

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### **MEMORANDUM OPINION**

## WECHSLER, Judge.

The State appeals from the district court's order granting Defendant's motion 2 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-\_\_\_\_, \_ \_\_\_ (No. 32,794, Oct. 27, 2014), cert. granted, 5 P.3d 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 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 Supreme Court has denied the State a stay or other remedy that would suspend the 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 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."). In its response to our notice, the State simply objects to our proposed 17

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.
4 5	JAMES J. WECHSLER, Judge
6	WE CONCUR:
7 8	CYNTHIA A. FRY, Judge
9 10	TIMOTHY L. GARCIA, Judge