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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

2 STATE OF NEW MEXICO,

Plaintiff-Appellee,

4 v.

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NO. 34,125

5 **TITO A. RODRIGUEZ,**

6 Defendant-Appellant.

7 APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY 8 Raymond L. Romero, 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 Debra Lautenschlager, Assistant Public Defender
- 16 Carlsbad, NM

17 for Appellant

MEMORANDUM OPINION

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1 WECHSLER, Judge.

Defendant appeals from the district court's order denying his motion to dismiss 2 **{1}** 3 the charge of commercial burglary. Defendant entered a conditional plea reserving for 4 appeal the issues raised in his motion to dismiss. [RP 111-21, 132] On the basis of this Court's opinion in State v. Archuleta, ____-NMCA-___, ___ P.3d ____ (No. 32,794, 5 6 Oct. 27, 2014), cert. granted, 2015-NMCERT-___ (No. 7 35,005, Jan. 26, 2015), we issued a notice of proposed summary 8 disposition, proposing to reverse. The State has responded with an objection to our notice and a request to hold this appeal in abeyance or provide the State with a 9 reasonable opportunity to seek guidance from the New Mexico Supreme Court on all 10 pending appeals controlled by our opinion in Archuleta. [MIO 1-2] We have provided 11 the State with such an opportunity, and the Supreme Court has denied the State a stay 12 13 or other remedy that would suspend the precedential value of Archuleta. Thus, 14 pursuant to Rule 12-405(C) NMRA, we apply Archuleta. See Rule 12-405(C) ("A 15 petition for a writ of certiorari filed pursuant to Rule 12-502 NMRA or a Supreme 16 Court order granting the petition does not affect the precedential value of an opinion of the Court of Appeals, unless otherwise ordered by the Supreme Court."). 17 18 {2} 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

material factual distinctions to remove this case from the control of our opinion in 1 2 Archuleta. For the reasons stated in our notice, we reverse Defendant's conviction for 3 commercial burglary. IT IS SO ORDERED. 4 **{3**} 5 JAMES J. WECHSLER, Judge 6 7 WE CONCUR: 8 CYNTHIA A. FRY, Judge 9 10 11 TIMOTHY L. GARCIA, Judge 12