

1 **WECHSLER, Judge.**

2 {1} Defendant appeals from the district court’s order denying his motion to dismiss
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
5 Court’s opinion in *State v. Archuleta*, ___-NMCA-___, ___ P.3d ___ (No. 32,794,
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
9 notice and a request to hold this appeal in abeyance or provide the State with a
10 reasonable opportunity to seek guidance from the New Mexico Supreme Court on all
11 pending appeals controlled by our opinion in *Archuleta*. [MIO 1-2] We have provided
12 the State with such an opportunity, and the Supreme Court has denied the State a stay
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
17 of the Court of Appeals, unless otherwise ordered by the Supreme Court.”).

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

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

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JAMES J. WECHSLER, Judge

7 **WE CONCUR:**

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CYNTHIA A. FRY, Judge

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TIMOTHY L. GARCIA, Judge