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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. 34,214**

5 **JONATHAN McKINLEY BOULDIN,**

6           Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

8 **Benjamin Chavez, 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 Sergio Viscoli, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17   **MEMORANDUM OPINION**

18 **BUSTAMANTE, Judge.**

1 {1} Defendant appeals the district court’s denial of his motion to dismiss the sole  
2 charge of commercial burglary. Defendant entered a conditional plea reserving this  
3 issue for appeal. [RP 84, 86] Based on our recent decision in *State v. Archuleta*, \_\_\_-  
4 NMCA-\_\_\_, \_\_\_ P.3d \_\_\_ (No. 32,794, Oct. 27, 2014), *cert. granted*, \_\_\_-NMCERT-  
5 \_\_\_\_ (No. 35,005, Jan. 26, 2015), we issued a notice of proposed summary  
6 disposition, proposing to reverse. The State has filed a response, objecting to our  
7 notice and requesting that we hold this appeal in abeyance or provide the State with  
8 a reasonable opportunity to seek guidance from the New Mexico Supreme Court on  
9 all pending appeals controlled by our opinion in *Archuleta*. [MIO 1-2] We have  
10 provided the State with such an opportunity, and the Supreme Court has denied the  
11 State a stay or other remedy that would suspend the precedential value of *Archuleta*.  
12 Thus, pursuant to Rule 12-405(C) NMRA, we apply *Archuleta*. *See* Rule 12-405(C)  
13 (“A petition for a writ of certiorari filed pursuant to Rule 12-502 NMRA or a Supreme  
14 Court order granting the petition does not affect the precedential value of an opinion  
15 of the Court of Appeals, unless otherwise ordered by the Supreme Court.”).

16 {2} In its response to our notice, the State simply objects to our proposed  
17 disposition without elaboration. [MIO 1] We continue to believe that there are no  
18 material factual distinctions to remove this case from the control of our opinion in

1 *Archuleta*. Accordingly, for the reasons stated in our notice, we reverse the district  
2 court's order denying Defendant's motion to dismiss the commercial burglary charge.

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

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**MICHAEL D. BUSTAMANTE, Judge**

7 **WE CONCUR:**

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**LINDA M. VANZI, Judge**

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**TIMOTHY L. GARCIA, Judge**