

**STATE V. CHICO**

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**STATE OF NEW MEXICO,  
Plaintiff-Appellant,  
v.  
DELAYNA CHICO,  
Defendant-Appellee.**

NO. 33,490

COURT OF APPEALS OF NEW MEXICO

March 18, 2015

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, John A. Dean, Jr.,  
District Judge

**COUNSEL**

Hector H. Balderas, Attorney General, Margaret McLean, Assistant Attorney General,  
Santa Fe, NM, for Appellant

Jorge A. Alvarado, Chief Public Defender, Santa Fe, NM, for Appellee

**JUDGES**

M. MONICA ZAMORA, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge,  
JONATHAN B. SUTIN, Judge

**AUTHOR:** M. MONICA ZAMORA

**MEMORANDUM OPINION**

**ZAMORA, Judge.**

{1} The State appeals from the district court's order dismissing a charge of commercial burglary. This Court issued a stay before addressing the merits of the State's appeal, pending our decision in *State v. Archuleta*, \_\_\_-NMCA-\_\_\_, \_\_\_ P.3d

\_\_\_\_ (No. 32,794, Oct. 27, 2014), *cert. granted*, 2015-NMCERT-\_\_\_\_ (No. 35,005, Jan. 26, 2015), the first of many cases raising the same issue relative to the charge of commercial burglary. Relying on our opinion in *Archuleta*, we lifted the stay and issued a notice of proposed summary disposition, proposing to affirm on December 19, 2014. [Ct. App. file] The State has filed a response, objecting to our notice and requesting that we hold this appeal 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 *Archuleta*. [MIO 1-2] 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 *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 precedential value of an opinion of the Court of Appeals, unless otherwise ordered by the Supreme Court.”).

**{2}** In its response to our notice, the State simply objects to our proposed 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 *Archuleta*. For the reasons stated in our notice, we affirm the district court’s order granting Defendant’s motion to dismiss.

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

**M. MONICA ZAMORA, Judge**

**WE CONCUR:**

**MICHAEL E. VIGIL, Chief Judge**

**JONATHAN B. SUTIN, Judge**