

STATE V. MARTINEZ

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
AUDREY MARTINEZ,
Defendant-Appellant.**

NO. 33,994

COURT OF APPEALS OF NEW MEXICO

March 16, 2015

APPEAL FROM THE DISTRICT COURT OF RIO ARRIBA COUNTY, Mary Marlowe-Sommer, District Judge

COUNSEL

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

Jorge A. Alvarado, Chief Public Defender, Sergio Viscoli, Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge, LINDA M. VANZI, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

{1} Defendant appeals from the district court's order denying her motion to dismiss the charge of commercial burglary. This appeal arises from two separate district court

cases that were addressed in a single plea agreement. Defendant entered a conditional plea reserving for appeal the issues raised in her motion to dismiss. [DS 2; RP 64 (00265), RP 70 (00366)] This Court issued a calendar notice proposing to reverse based on 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 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 1-3] 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 *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, 3] 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 reverse Defendant’s conviction for commercial burglary.

{3} IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

LINDA M. VANZI, Judge