

STATE V. JIMENEZ

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**STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
COTY E. JIMENEZ,
Defendant-Appellee.**

NO. 33,158

COURT OF APPEALS OF NEW MEXICO

March 9, 2015

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Darren M. Kugler,
District Judge

COUNSEL

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JUDGES

MICHAEL E. VIGIL, Chief Judge. WE CONCUR: CYNTHIA A. FRY, Judge, J. MILES
HANISEE, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

{1} The State appeals from the district court's order dismissing the charge of non-residential burglary brought against Defendant. 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 or non-residential burglary. Once the opinion in *Archuleta* was issued, we relied on that opinion, lifted the stay, and issued a notice of proposed summary disposition, proposing to affirm. [Ct. App. file]

{2} The State has filed a response objecting to the 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 regarding 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's request for 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.").

{3} In its response to our notice, the State simply objects to our proposed disposition and indicates it is unable to provide any additional facts or legal argument in response to the proposed disposition. [MIO 1, 3] We continue to believe there are no material factual or legal distinctions between this case and our opinion in *Archuleta*. Therefore, for the reasons stated in our notice of proposed disposition, we affirm the district court's order granting Defendant's motion to dismiss the charge of non-residential burglary.

{4} IT IS SO ORDERED.

MICHAEL E. VIGIL, Chief Judge

WE CONCUR:

CYNTHIA A. FRY, Judge

J. MILES HANISEE, Judge