

STATE V. REYES

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
GABRIEL GUZMAN REYES,
Defendant-Appellant,**

NO. 33,059

COURT OF APPEALS OF NEW MEXICO

March 10, 2015

APPEAL FROM THE DISTRICT COURT OF DONA AÑA COUNTY, Fernando R.
Macias, 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, Assistant Appellate Defender,
Santa Fe, NM, for Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge,
RODERICK T. KENNEDY, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Defendant appeals from a conviction for burglary, entered pursuant to a plea agreement in which he reserved the right to appeal. On November 19, 2014, we issued a second notice of proposed summary disposition in which we proposed to reverse.

{2} On February 9, 2015, the State filed a response with this Court, indicating that it would be filing a motion for stay with the New Mexico Supreme Court and requesting that we await a decision from that Court on the State's motion before taking further action in this case. We have done so. The New Mexico Supreme Court has recently denied the State's motion.

{3} Although it is less than entirely clear, the State's response may incorporate a similar request that this Court stay or hold this case in abeyance pending a decision from the New Mexico Supreme Court in *State v. Archuleta*, ____-NMCA-____, ___ P.3d. ____, (No. 32,794, Oct. 27, 2014), *cert. granted*, ____-NMCERT-____ (No. 35,005, Jan. 26, 2015). To the extent that the such request is made, it is denied.

{4} Turning to the merits, we previously opined that Defendant's conviction for burglary cannot stand in light of this Court's decision in *Archuleta*. The State indicates that it "is unable to provide any additional facts or other legal argument in response to the proposed disposition."

{5} Accordingly, for the reasons stated, we reverse and remand for further proceedings consistent herewith.

{6} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

RODERICK T. KENNEDY, Judge