

STATE V. SHORTY

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
TERRISON SHORTY,
Defendant-Appellant.

NO. 34,049

COURT OF APPEALS OF NEW MEXICO

March 12, 2015

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, William C. Birdsall,
District Judge

COUNSEL

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

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

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
CYNTHIA A. FRY, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

{1} Defendant appeals from the district court's order denying his motion to dismiss the sole charge of commercial burglary. [DS 3; RP 52, 61] Defendant entered a

conditional plea reserving for appeal the issues raised in his motion to dismiss. [RP 43-44]

{2} On the basis of this Court's opinion in *State v. Archuleta*, 2014-NMCA-____, ____ P.3d ____ (No. 32,794, Oct. 27, 2014), *cert. granted*, 2015-NMCERT-____, (No. 35,005, Jan. 26, 2015), we issued a notice of proposed summary disposition, proposing to reverse. The State has responded with an objection to our notice and a request to 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.").

{3} 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 reverse Defendant's conviction for commercial burglary.

{4} IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

CYNTHIA A. FRY, Judge