

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 44 SSM 11
The People &c.,
Respondent,
v.
Kwabena Appiah,
Appellant.

Submitted by Steven M. Sharp, for appellant.
Submitted by Peter H. Willis, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed and the case remitted to that Court for further proceedings in accordance with this memorandum.

Defendant's waiver of the right to appeal was invalid and unenforceable pursuant to our analysis in *People v Thomas* (34 NY3d 545 [2019]) and *People v Bisono* (36 NY3d 1013 [2020]). In voting to affirm the judgment, one Justice of the three-Justice Appellate Division majority panel did not reach the merits of defendant's interest-of-justice challenge to the excessiveness of his sentence based on that Justice's conclusion that the appeal waiver was valid (*see generally People v Callahan*, 80 NY2d 273, 284-285 [1992]). We therefore reverse and remit to the Appellate Division for consideration of the merits of defendant's excessive sentence challenge (*see People v Billingslea [decided sub nom. People v Lopez]*, 6 NY3d 248, 257 [2006]).

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Third Department, for further proceedings in accordance with the memorandum herein. Chief Judge Wilson and Judges Rivera, Garcia, Singas, Cannataro, Troutman and Halligan concur.

Decided January 16, 2024