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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 194  
The People &c.,  
Respondent,  
v.  
Ermal Qoshja,  
Appellant.

Richard M. Greenberg, for appellant.  
Patricia Curran, for respondent.

MEMORANDUM:

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

The Appellate Division's summary decision and order leaves it unclear whether the panel reached the merits of

defendant Ermal Qoshja' claim or predicated its affirmance on the waiver of appeal. We remit to the Appellate Division to clarify this question and, if appropriate, to consider the merits. We repeat what we said in People v Callahan (80 NY2d 273, 285 [1992]):

"[I]n cases where there has been a bargained-for waiver of the right to appeal and the intermediate appellate court determines that the judgment of conviction should be affirmed, it would be helpful if the intermediate appellate court would specify whether its disposition is based on the existence of an enforceable waiver or instead on the merits of the defendant's appellate claims. Such specificity would facilitate further appellate review and minimize unnecessary remittals."

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Order reversed and case remitted to the Appellate Division, First Department, for further proceedings in accordance with the memorandum herein. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided November 15, 2011