

# State of New York Court of Appeals

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

No. 88 SSM 27  
The People &c.,  
Respondent,  
v.  
Eugene Mendoza,  
Appellant.

Submitted by David Fitzmaurice, for appellant.  
Submitted by William H. Branigan, for respondent.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Second Department, for further proceedings. Under the totality of the circumstances and upon the People's concession, defendant's appeal waiver was invalid and therefore did not foreclose consideration of his harsh and excessive sentence claim (*see People v Bisoño*, 36 NY3d 1013, 1017-1018 [2020]). Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Wilson, Singas and Cannataro concur.

Decided November 18, 2021