

State of New York Court of Appeals

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

No. 32 SSM 34
The People &c.,
Respondent,
v.
Juan Johnson,
Appellant.

Submitted by Alice R. B. Cullina, for appellant.
Submitted by Andrew S. Durham, 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 that the appeal waiver was invalid because the plea court conflated the right to appeal with those rights automatically forfeited by a guilty plea, defendant's appeal waiver did not foreclose consideration of his suppression claim (*see People v Moyett*, 7 NY3d 892, 892-893 [2006]).
Chief Judge DiFiore and Judges Rivera, Garcia, Wilson, Singas, Cannataro and Troutman concur.

Decided February 10, 2022