

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

602

KA 17-00891

PRESENT: CENTRA, J.P., PERADOTTO, DEJOSEPH, CURRAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KURT HAZZARD, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

JOHN J. RASPANTE, UTICA, FOR DEFENDANT-APPELLANT.

LEANNE K. MOSER, DISTRICT ATTORNEY, LOWVILLE, D.J. & J.A. CIRANDO,
PLLC, SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR RESPONDENT.

Appeal from a resentencing of the Lewis County Court (Daniel R. King, J.), rendered December 2, 2016. Defendant was resentenced upon his conviction of course of sexual conduct against a child in the first degree and incest in the third degree (two counts).

It is hereby ORDERED that the resentencing so appealed from is unanimously affirmed.

Memorandum: In appeal No. 2, defendant appeals from a judgment convicting him upon a jury verdict of, inter alia, course of sexual conduct against a child in the first degree (Penal Law § 130.75 [1] [b]) and, in appeal No. 1, he appeals from the resentencing on that conviction. We note that, inasmuch as the sentence in appeal No. 2 was superseded by the resentencing in appeal No. 1, the appeal from the judgment in appeal No. 2 insofar as it imposed sentence must be dismissed (*see People v Primm*, 57 AD3d 1525, 1525 [4th Dept 2008], *lv denied* 12 NY3d 820 [2009]).

Viewing the evidence in light of the elements of the crimes as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349 [2007]), we reject defendant's contention in appeal No. 2 that the verdict is against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]). With respect to the credibility of the victim, we note that her testimony "was not so inconsistent or unbelievable as to render it incredible as a matter of law" (*People v Black*, 38 AD3d 1283, 1285 [4th Dept 2007], *lv denied* 8 NY3d 982 [2007]). Issues of credibility are primarily for the jury's determination (*see People v Witherspoon*, 66 AD3d 1456, 1457 [4th Dept 2009], *lv denied* 13 NY3d 942 [2010]), and we see no basis for disturbing the jury's credibility determinations in this case. Contrary to defendant's contention in appeal No. 1, the resentencing is

not unduly harsh or severe.

Entered: June 14, 2019

Mark W. Bennett
Clerk of the Court