

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

1031

**KA 23-00705**

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, OGDEN, AND DELCONTE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANTHONY B. CURIONE, DEFENDANT-APPELLANT.

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SCHLATHER, STUMBAR, PARKS & SALK, LLP, ITHACA (EMILY TURNER OF COUNSEL), FOR DEFENDANT-APPELLANT.

MACKENZIE M. STUTZMAN, PENN YAN, FOR RESPONDENT.

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Appeal from a judgment of the Yates County Court (Jason L. Cook, J.), rendered February 21, 2023. The judgment convicted defendant upon a nonjury verdict of endangering the welfare of a child and attempted rape in the third degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a nonjury verdict of endangering the welfare of a child (Penal Law § 260.10 [1]) and attempted rape in the third degree (§§ 110.00, 130.25 [3]). Defendant contends that County Court erred in imposing consecutive definite sentences of imprisonment, the aggregate of which exceeds one year, because the "offenses . . . were committed as parts of a single incident or transaction" (§ 70.25 [3]). We reject that contention. The incidents giving rise to the conviction involved different victims and occurred several hours apart (*see People v O'Neil*, 116 AD2d 853, 853 [3d Dept 1986]; *see generally People v Pinkard*, 209 AD2d 1051, 1052 [4th Dept 1994]). Inasmuch as the offenses "were committed during separate and distinct incidents or transactions[,] . . . the court legally imposed consecutive definite sentences, the aggregate of which exceeds one year" (*Pinkard*, 209 AD2d at 1052; *see People v Booth*, 119 AD2d 758, 760 [2d Dept 1986]).

Entered: February 2, 2024

Ann Dillon Flynn  
Clerk of the Court