Legislative Assembly

10/08/2000

Crimes (Sentencing Procedure) Amendment (Life Sentence Confirmation) Bill Hansard Extract

Second Reading

Mrs CHIKAROVSKI (Lane Cove—Leader of the Opposition) [10.04 a.m.]: I move:

That this bill be now read a second time.

Mr Whelan: Mr Speaker, only one copy of the bill is available. The procedure requires that three copies of the bill be available.

Mr O'Doherty: Why don't you want this to be debated, Paul?

Mr Whelan: I do.

Mr SPEAKER: Order! The Leader of the House has drawn the attention of the Chair to the lack of copies of the bill. I refer to the standing orders at chapter 16, which deal with the procedure for public bills. Standing Order 198 reads:

(6) 3 copies of the bill shall be handed to the Clerk and the bill shall be read a first time without question put.

(7) At each reading the Clerk shall read the short title of the bill.

Two more copies of the bill are required.

Mr Whelan: You have to abide by procedures. I want a copy of the bill.

Mr SPEAKER: Order! The procedure requires members who are introducing a bill to provide three copies of the bill to the House. I understand that the House is now in possession of the additional copies of the bill.

[*Interruption*]

Order! The honourable member for Gosford will resume his seat. The Leader of the Opposition has the call.

Mrs CHIKAROVSKI: Mr Speaker, as I said, the bill that I am seeking to have passed through this House is important. It is also urgent that it go through the House as quickly as possible. The Opposition wants to make sure that Allan Baker and other prisoners whose files are marked "never to be released" are denied the existing loophole which provides them with access to the Supreme Court, which could then allow them to walk out into the community. We do not want these people in our community as prisoners on leave, prisoners on parole or as free individuals. Any one of these outcomes is absolutely and totally unacceptable. They are totally unacceptable to the family and friends of Virginia Morse. They are totally unacceptable to the rural community of New South Wales, particularly to the thousands of women who live in isolated and exposed circumstances on country properties. They are totally unacceptable to the people of New South Wales and they are totally unacceptable to the Opposition.

The Government continues to hesitate and to prevaricate. The Government is paralysed over this issue. It seems incapable of taking a simple action which will prevent the release of prisoners who trial judges have already said are too depraved and to dangerous ever to be free in our community again. The Government's motivation for inaction seems to be that it is intimidated by legal doubts. We have been told constantly by the Premier, the Attorney General and the Leader of the House that there are difficult legal and constitutional issues involved. This is absolutely untrue. It is just not right. The Opposition has obtained legal advice from senior counsel. It states:

> Since Parliament has provided those prisoners with a process which enabled them to have their sentences determined by being shortened from that originally imposed, if appropriate, there is no reason in principle why Parliament cannot remove or (substantially amended or alter) that process either with respect to all remaining prisoners in such a position, or with respect to a particular prisoner ...

And this Government has already amended the process which existed in the truth in sentencing legislation. All we are asking it to do now is to take away a right which this Parliament has already given it. This Parliament has the right to take away that right from these prisoners. I go on to quote—

Mr Whelan: It is a political stunt.

Mrs CHIKAROVSKI: It is a cheap, nasty interjection by the Leader of the House to say that this is a political

stunt.

Mr Whelan: You are on record on 2BL.

Mrs CHIKAROVSKI: Say that to Brian Morse.

Mr SPEAKER: Order! The Leader of the House will cease interjecting. The Leader of the Opposition will address her remarks through the Chair.

Mrs CHIKAROVSKI: I am appalled that the Leader of the House—

Mr SPEAKER: Order! I call the Leader of the House to order.

Mr Whelan: You are giving them grounds for appeal. That is what you are doing.

Mr Hartcher: Mr Speaker, this should not be tolerated. The Leader of the House should be named.

Mr SPEAKER: Order! I call the Leader of the House to order for the second time. I call the honourable member for Gosford to order.

Mrs CHIKAROVSKI: I am appalled that the Leader of the House would show such discourtesy to Brian Morse, the family of Brian Morse and the families of other victims such as Janine Baldwin and Anita Cobby. I just cannot believe that the Leader of the House is not prepared to listen to this important issue, an issue that affects those people's lives. Why should Brian Morse, every seven years or even more frequently, have to sit in a court and listen to the disgusting facts of what Baker did to his wife? You are not prepared to give him the courtesy—

Mr SPEAKER: Order! The Leader of the Opposition will address her remarks through the Chair.

Mrs CHIKAROVSKI: The legal advice that the Opposition has obtained says:

> It is within the power of the New South Wales Parliament to pass a valid Act which would have either a direct or indirect effect on the ability of Mr Baker to continue with his application for redetermination of his life sentence.

The Government argues that it cannot pass legislation while this matter is being heard in the Supreme Court. That also is untrue. There are precedents in both the Supreme Court and the High Court to support what I am saying. As I am sure the Government is aware, in 1986 a question arose as to the validity of particular legislation of the Commonwealth Parliament which had the effect of cancelling the registration of the Builders Labourers Federation whilst there were proceedings before the High Court of Australia dealing with that question. In dealing with the question of validity, the High Court said:

> It is well established that Parliament may legislate so as to affect and alter rights in issue in pending litigation without interfering with the exercise of judicial power in a way that is inconsistent with the Constitution. Chapter 3 contains no prohibition, expressed or implied, that rights in issue in legal proceedings shall not be the subject of legislative declaration or action.

That is the High Court of Australia saying that what the Opposition is proposing is entirely within the purview of this Parliament. But it is not just the High Court and Federal legislation that have dealt with this issue. This very Parliament has passed legislation that falls into the same category. This very Parliament passed such legislation in 1986. Who was a member of the Cabinet in 1986? The Premier of New South Wales was in Cabinet in 1986 when the Cabinet approved, and this Parliament subsequently passed, legislation that sought to do what the Opposition seeks to do today—try to stop an action already in the Supreme Court. The Parliament has the right to do that. I quote again from what the High Court said in the case involving the cancellation of the registration of the Builders Labourers Federation:

> Before the appeal was heard the New South Wales Parliament enacted the Builders Labourers Federation (Special Provisions) Act 1986.

In that decision Mr Justice Kirby said:

> The Queen in Parliament is supreme.

In the same case Mr Justice Mahoney said:

> Under the New South Wales constitutional arrangements it is, in my opinion, for the Parliament to determine the propriety and the desirability of a particular exercise of legislative power. The Parliament may, by legislation, intervene in the present exercise of judicial power in a particular case. The view may well be held that to intervene in judicial proceedings requires strong justification, not the least because intervention for good reason is apt to cause intervention without one.
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> But it is the prerogative of the Parliament to determine whether the reason for intervention be good or, whether good or bad, it will bear the consequences which constitutionally and electorally may flow from it.

I am prepared to bear the consequences electorally from bringing this legislation into the Parliament and having it passed and keeping Baker and his ilk in jail. The Parliament has that right. We as legislators have to stand before our community and say, "We have done this. Judge us, by your standards, as to whether what we have done is right or

wrong." We should not, as the Government is doing, hide behind some legal fabrication which asserts that this Parliament does not have the power to pass such legislation. This Parliament has that power. Mr Justice Mahoney said further:

> But in the end power, and so the responsibility, lies with the Parliament, and in my opinion it is proper that it be so, for the consequences of such legislation may be serious and it is the Parliament and those who comprise it who must be accountable for it.

This Parliament has the power, indeed the obligation, to pass this legislation to make sure that Allan Baker never ever walks free. The Opposition does not believe that there are any legal doubts or questions.

Mr Whelan: Your own barrister does. Your own legal advice does.

Mrs CHIKAROVSKI: That is absolute rubbish. The barrister agrees with the judges on this issue: that it is up to the Parliament to make the decision as to whether legislation is right or wrong.

Mr SPEAKER: Order! The honourable member for Wakehurst will remain silent.

Mrs CHIKAROVSKI: As I said, there is nothing to prevent this Parliament from passing this legislation. All that is lacking is the courage and commitment of the Premier to do so. I say to the Premier: Let's pass this legislation. We cannot do what the Government has done, that is, shirk the issue. We cannot abrogate our responsibilities and duties as a Parliament. The critical point is that, as things stand now, Allan Baker is taking his steps towards freedom. This is a man who has been universally vilified and condemned for his horrendous actions in the rape, torture and murder of Virginia Morse. This is the man that trial judge Mr Justice Taylor branded as an "obscene animal". This is the man that the Premier himself has described as "evil incarnate". This is the man that the Premier believes revolted and repulsed people so much that he said:

> I think the view of the majority of people in New South Wales was that capital punishment would have been too generous a treatment for them.

In April 1997 the Premier said of the crimes of Baker and his partner Kevin Crump:

> These are the cases in which a life sentence in gaol must mean life and we will do whatever we can to see that it does.

That was April 1997, and it is now August 2000. The Premier has an opportunity to make good on his own words. Once again we are giving the Premier and the Parliament the opportunity to confirm what Mr Justice Taylor held so strongly: his view that Baker should stay in gaol. His Honour said that any application for release from Baker and Crump should be treated with the same mercy they extended to Virginia Morse while she begged for her life as they raped, tortured and murdered her. And that is the tragic theme that underpins our having to consider this bill. The genesis of all this was a foul and unspeakable crime committed by Baker and Crump—a crime that saw hardened detectives breaking down and sobbing over its very callousness, a crime that has horrified and shocked to speechless most people who have learned even some of its details.

This is a House of legislation. It is our responsibility to set the boundaries within which our community operates and within which society is protected. In setting laws, it is crucial that we remember that we act on behalf of people—normal, ordinary people throughout this State who expect us to protect them. Those people expect us to act on the basis of human values that honour victims of crime and express compassion and support for those victims and their families. People expect us to use every possible mechanism and device to protect them from predators like Crump and Baker. As I have said, this Parliament has an opportunity to do that. This legislation is that opportunity. Again I refer to the legal advice and the comments of Mr Justice Kirby, who stated:

> [The] unbroken law and tradition [in Australia] has repeatedly reinforced and ultimately respected the democratic will of the people expressed in Parliament. As reflected political reality is in our society and the distribution of power within it. I also do so in recognition of the dangers which may attend the development by judges (as distinct from the development by the people's representatives) of a doctrine of fundamental rights more potent than parliamentary legislation.

The Parliament has the right. The bill before the House is simple in its intent. We have a precedent, and it is time to act. I bring this bill forward in the absence of any attempt by the Premier or the Attorney General to take action. We have read the judgment of the High Court in *Kable v Director of Public Prosecutions* (NSW) and we believe that the difficulties that arose in the Kable case do not exist in this bill. This is not about an individual; this is not about prospective acts of an individual. It is about confirming judgment on an act that has previously been committed. Our senior counsel has advised that nothing in the Kable case or in the Commonwealth Constitution would mark any influence on the legislation that I introduce today.

The Opposition seeks simply to eliminate the option of people who have had their papers marked "never to be released" seeking to have their sentences redetermined in a different time frame and in a different context. That was a right given by the Parliament. The Parliament can take that right away. We believe there are some crimes so horrific that penalties should not be re-evaluated at a later date. There is no need for a further consideration at a later date—a consideration tempered by a range of extraneous issues and arguments, including claims of personal reformation.

When a trial judge such as Justice Taylor is so moved by the obscenity, depravity and horror of the evidence

that he has received that he imposes the strongest available penalty, we should respect his response. In the case of Allan Baker, Justice Taylor's response was that Baker should be locked away for the rest of his life. This bill confirms Justice Taylor's intention—in fact, it is the only step that we can take today. We have only one option and only one choice today: we must pass this bill unanimously, present it in another place quickly and move for immediate assent. I have written to the Premier requesting that he recall the Legislative Council for at least one day next week to deal with this matter. To do less would be a betrayal of the memory of Virginia Morse; it would be a betrayal of her husband, Brian, and of her family. To do less would be a betrayal of the trust that the people of this State have in this Parliament to protect them.

Just before the March 1995 election, the then New South Wales Leader of the Opposition and now Premier stood on the lawn with the honourable member for Smithfield, who is now Minister for Transport, and Minister for Roads. The Premier promised Gwen Hanns that he would do everything he could to keep John Lewthwaite—who murdered Gwen Hanns' five-year-old daughter, Nicole, with such ferocity that blood splattered onto the ceiling of the room—and those like him in gaol. John Lewthwaite now walks free. The Premier failed Gwen Hanns. The Premier promised Brian Morse that he would do everything he could to keep Crump and Baker in gaol. Crump will eventually walk free.

Mr Whelan: Over my dead body.

Mrs CHIKAROVSKI: He is eligible for parole in 2003. The Minister knows that. The Premier has failed Gwen Hanns and he has failed Brian Morse once. Please, Premier, do not fail Brian Morse again. I commend the bill to the House.