

PEN PALS

How close should a journalist get to his subject? **Dan Box** reported on Zak Grieve's murder conviction - and their letters have led to a friendship, of sorts



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Letters must bear a full address and contact number.

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Zak Grieve first wrote

to apologise for telling me to grow some balls. Sent from the prison in Darwin where he's serving a life sentence, the letter was written in black biro on a single sheet of A4 paper. I was struck by its child-like directness. The handwriting was neatly printed, the spelling mostly right but sometimes wrong.

"I used to be a very nice relaxed passive person with a very caring heart," Grieve wrote. But that changed following his conviction. "Now I'm very self aware of the world and harsh realities." On his prison television he'd watched me being interviewed about his sentence of a minimum 20 years for murder, despite the judge saying he was not there when the killing took place. Grieve felt I'd failed to properly defend him. His father, Warren, phoned me afterwards to pass on his son's message: *Toughen up. Pick a side. Grow some balls.*

Since then, Grieve wrote how he'd seen the reporting and a documentary I'd done for *The Australian*, describing the conflicting evidence over whether he physically took part in the murder or backed out at the last minute, and how the judge who sentenced him to life in prison described this result as an "injustice". Following our reporting, the Northern Territory Government said it would consider Grieve's release.

"Dan I knew very little and judged so quickly ... I'm sorry..." he said in his letter. I wrote back and we've exchanged letters for over a year since then. Grieve, who was 19 when he was convicted and is now 26, writes about his family, about the books he is reading and writing in prison, and about his hopes. He also keeps asking me a question. It's the same question faced by the NT Government as it decided whether to release him early. I've tried to avoid answering directly, but he is insistent: "What in a realistic sense is a reasonable sentence that I should have received?"

Ray Niceforo was an unsympathetic victim. Aged 40 and a member of one of Katherine's most influential families, who liked to boast how they sweated in the Territory sun to literally build the

town, he had a temper on him. He also had criminal convictions for violence and firearms offences. Even the prosecution lawyer at the trial over his murder said he was "far from a perfect man".

In the spring of 2011, Niceforo was in a dispute with his former partner, Bronwyn, over a laundry business they ran together. He sent her a series of text messages. "GET ME WAT U HAVE 2 OR U WIL BE IN TEARS TIL THE DAY U DIE," said the first, sent at 8.54pm on September 19. Sixteen minutes later he wrote: "I TOLD U PIS ON ME I SHIT ON U." The next morning, Niceforo sent another message: "U BETER THINK ABOUT U R DOING REAL QUICK 2DAY COULD BE THE DAY U LOSE SOMEI CLOSE 2 U." Bronwyn saw this as a threat to kill her son.

At the time, Niceforo, Bronwyn and her son Chris Malyschko were all living in Katherine, a small town at the junction of two desert highways. It had two pubs, one club, a shopping mall and little else but sand and bush as far as the horizon. Some of the locals called it K-Town. For years, Niceforo had abused Bronwyn physically and emotionally. Unable to escape the desert and her own depression, she decided she would pay to have him killed.

Three people later admitted agreeing to carry out the murder: 24-year-old Malyschko, his mate Grieve, and another friend of Grieve's named Darren Halfpenny, 22. Bronwyn paid them \$15,000 to kill Niceforo and the three men spent several nights playing computer games and smoking cannabis together while waiting for their victim to show up at his apartment in Katherine. On Sunday October 23, he arrived home. Then they attacked him.

In court, Grieve insisted he pulled out at the last moment, telling the others he could not go through with the murder. Malyschko's evidence was also that Grieve chickened out and left them but Halfpenny, in contrast, said all three of them were there when the killing took place. The way the law works in the NT, it didn't matter to the jury which of the three was lying. Whether Grieve was there or not, he was still part of the murder plot and could be found guilty because he didn't try to stop it happening.

Alibi: Grieve, flanked by police and lawyers, visits the crime scene during the trial

Sentencing Grieve to prison, however, Judge Dean Mildren said the evidence did not prove that Grieve was present. Moreover, he was immature, "a follower, not a leader", and his "degree of criminality" was much less than that of the other men. "If I were free to do so," the judge said, he would have imposed a lesser sentence than life with a minimum of 20 years.

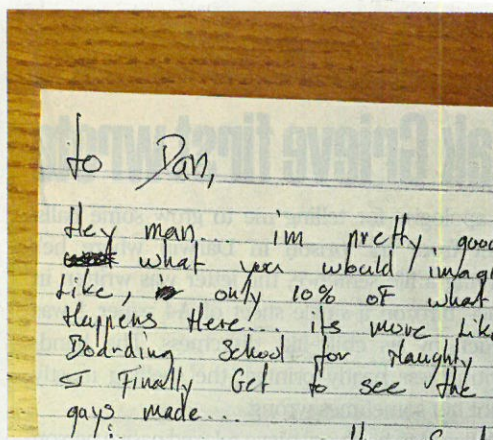
What prevented Judge Mildren were laws in the NT that dictate mandatory sentences be handed out for certain crimes. The same laws said that Malyschko, who wielded the heavy spanner used to end Niceforo's life, could get a discount on his sentence because he had previously been threatened by their victim. Malyschko received a shorter non-parole period, of 18 years. Bronwyn, who paid for the killing, pleaded guilty to manslaughter by reason of provocation. She received a four-year minimum sentence. After Grieve was found guilty, the judge was forced to give him the longest prison sentence of the three despite his doubt about what had taken place.

When I spoke to Judge Mildren at his home in Queensland, he called mandatory sentencing a "silly nonsense". Asked how it felt to be forced to jail a man for life when he felt that was an injustice, he replied: "I feel very sad and disappointed."

US writer Janet Malcolm, in her 1990 book *The Journalist and the Murderer*, talks about the strange, unhealthy "false friendship" that develops between reporter and subject. It's true. I've never met Grieve – the prison authorities would not allow an interview – but I know from his letters that he wakes at seven and has a four-tablespoon black coffee before heading for work in the education building, where he tutors other prisoners. I know he likes to draw and that his feet are so big – size 17 – that the shop in Katherine had to order his shoes specially. I've seen a photograph of him as a pale, smiling baby held up to the camera by his elder brother. I've seen another photograph of him as a 100-something-kilo adult slumped against a prison wall, staring into the distance.

From the court transcripts, I know that Grieve didn't really know Niceforo. Malyschko had asked him to take part in the murder and Malyschko was "my best friend". All Grieve knew was that somebody was bashing his best friend's mum.

In his letters, Grieve describes his life in the Darwin Correctional Centre: "Walking outside, the sun is bright in the sky with no clouds to be seen with strong winds holding a dry chill and blowing red dust everywhere." He gives me



Revealing: one of Grieve's letters to writer Dan Box; Judge Dean Mildren



advice – "If I were in your shoes I guess I would weigh up the positives" – and asks me to describe the "hustle and bustle" of my life in the outside world. Once he told me about the workouts he does in prison, dizzying rounds of chin ups, pull-ups and press-ups, and I repeated them in my local gym. "Can't wait to hear back from you," he wrote in another letter. "Hope you and the family are doing well and glad your in high spirits."

"A correspondence is a kind of love affair," writes Malcolm. And I do look forward to his letters, which arrive in envelopes stamped "NT Department of Correctional Services Intelligence Unit". That does not mean I necessarily believe him. For his part, Grieve keeps returning to the question of his sentence: "In your opinion what do you think I would/should have gotten?" It's as if he is testing me, to find out what I really think about him, or asking me to quantify his guilt.

The truth is that I don't know what happened that night in October 2011. Other than the three men who agreed to carry out the killing, no one can say who was there and who wasn't. Certainly there were no fingerprints or DNA to link Grieve to the murder, which took place in Niceforo's kitchen, or to the journey to dispose of the body, which was dumped beside the road a few kilometres outside Katherine. Yet Halfpenny says Grieve was in both these places. Halfpenny "was a practised liar and clearly an untrustworthy witness", according to Judge Mildren. But why would he lie about this in particular? To me it seems that, really, all you have is doubt.

In contrast, Grieve, at least in his first letters, seemed to be relatively confident. The NT Government would consider whether to release him. "I may be a little ahead of myself but I would like to think, thanks to you ... I may be out of here in the next 18 months," one of his early letters reads.

The NT Government's review came about because of another letter that I had a hand in. Grieve's mother, Glenice, dictated it while sitting in a cafe in Katherine in May 2017, and I typed it. "I appreciate you taking the time to read this letter, for giving me some sort of hope that you are actually listening to a mother's plea," it read.

Mrs Grieve, who did not have access to a computer, wanted me to send it the Prime Minister, the Governor-General, and the NT's Chief Minister and Administrator. She'd tried contacting different politicians before, but got no answer. "I'm a mother who's looking to you to find some sort of mercy. For your compassion, your consideration, for my plea to have my son released," she dictated. I sent the letter, and *The Australian* also published it.

The response came quickly and was unexpected. As a result of Mrs Grieve's request, the NT Administrator, John Hardy, would consider exercising what is called the Prerogative of Mercy, an ancient royal power to order a prisoner's release. Initially, Grieve's parents were ecstatic, then everything went silent. A year later, in July 2018, Grieve's lawyers followed up on his mother's letter, sending the Administrator a formal, 34-page Petition for Mercy application citing legal precedent and "the unique injustice of Zak's case" as grounds for his immediate release.

The lawyers also used their letter to argue that the NT Government repeal the mandatory sentencing laws under which he was convicted. "Zak is the poster boy for why mandatory sentencing is wrong," says Grieve's barrister,

Felicity Gerry QC, when I meet her over breakfast before she hurries off to appear in an unrelated case. "He's a lovely boy," she says. "He's imaginative, he's literate, he's artistic, he's funny. He played too many video games. He's a bit overweight."

Gerry says Grieve and his mates did "plan something truly stupid" but mandatory sentencing meant the judge was not able to take into account the fact that he pulled out of the plan. The lawyers' petition, in turn, was sent to the NT Attorney-General, who sought the opinions of her Director of Public Prosecutions, Correctional Services officials and the NT's Solicitor-General. More months passed as emails went back and forth between the government departments.

During this time there were other letters. For years, Grieve had been filling in pink Prisoner Request Forms, trying to navigate the prison system and get hold of comic books or teenage fantasy novels ("the book you told me to reorder has again been lost somewhere"). Now he wrote to the Attorney-General, complaining that his family was not able to send him books in prison, and about the prices he was forced to pay to get the coloured pencils he uses to draw anime superheroes, which he sends to his mum.

Mrs Grieve says her son has changed since going into prison. He's thinner. Tougher. But the possibility of his release brought a surge of emotions to the surface; how would he adjust to life as an ex-convict? She says her son no longer knows what the world outside the jail is like.

They'll find a way, his mother tells him. "Zak, you know if you get out, I would have to move, I will be there for you," she's said during her visits to the prison. To get there she must travel for hours on the Greyhound bus from her home in K-Town. In October 2018, she asked if her son could be released to attend his grandmother's funeral. The response, sent by email from the Correctional Services Commissioner Scott McNairn, is polite but final. "I am very sorry for your loss," the commissioner wrote, but the request "is not supported. There also needs to be consideration for the victim's family who currently reside in Katherine." Reading those words, Mrs Grieve realised that even if her son were released from prison early, he could never go home.

In his letters, Grieve says he is writing a book, describing it as "fantasy/science fiction plus romance and adventure", and laying out its structure over several pages of A4. Like the anime characters he draws, and the computer games he used to play for hours as a teenager in Katherine, I wonder if it is a way to escape his

reality. Over the past year, with no word from the NT Administrator, his optimism faded. No longer was he talking about his release within 18 months. Instead, "I know if I get outta here some day I would like to go travelling." Check out the backyard, maybe, or Japan. He has seen very little of the world.

In *The Journalist and the Murderer*, Malcolm describes the imbalance in the relationship between journalist and subject, saying: "He was completely at my mercy. I held all the cards." In Grieve's case, I'd extend that to not only myself but those other reporters who covered his case, to his lawyers and the NT Government. We can choose what we say publicly about him. He, locked in his cell in the lifers' block at Darwin prison, is entirely helpless.

In his last letter, Grieve asked me again to say

what sentence I thought he should have received for his part in the murder: "I would like an actual guestimation please". Maybe he was trying to get me to empathise with his position. Uncertain what to tell him, I tried to avoid giving a direct answer, hiding instead behind his lawyers' petition, which said that in other states without mandatory sentencing he might already have been released. I wrote that, as a journalist, I'd covered some of the cases they used in their argument, where people who were involved in planning killings but did not pull the trigger were sent to jail for between six and seven years without parole. That sounded just, my letter said. If Grieve had got the same, he might be out by now.

Then, in December, came another letter, this one addressed to Grieve's lawyers. It was sent by Vicki O'Halloran, who had replaced John Hardy as Administrator in the time since the NT Government began considering the mercy plea.

Her letter is short and blunt. It says that she has "acted ... to exercise the Prerogative of Mercy in favour of Mr Zak Grieve by reducing the non-parole period of his sentence for murder from 20 years to 12 years' imprisonment." It's not the immediate release his lawyers asked for. But it is an acknowledgment that there are sufficient doubts over what took place to say Grieve's first jail sentence was wrong. And it implies that those at the most senior levels of the NT Government now agree that mandatory sentencing can lead to such mistakes.

There are dozens of other people in the NT who have received mandatory murder sentences and may now also seek to have them overturned. NT Attorney-General Natasha Fyles will not be drawn about this, however, saying only that any petition for mercy should be treated with "the respect it deserves" and that her government is considering changing the mandatory sentencing legislation as part of a wider reform.

In Katherine, Glenice Grieve is angry. Her son has served seven years and now he must keep going to 2023 before he can get his parole. Nothing, still, is certain. "Five more years he's got to stay calm, collected and not do anything for them to take that away from him," she says. "I'm trying to keep him strong."

Mistakenly, I pick a side and say the decision to at least reduce Grieve's sentence was a good one. His mother fires back: "It's all right for people to say it's a good decision but you're not living in my shoes, you're not living in my son's shoes. You're not the one stuck in prison." Unlike in Grieve's letters, I can hear the emotion in her words. ●



Five more years: Grieve, above, and his mother Glenice

