

[1] Brian Tamaki faces four charges of intentionally failing to comply with Covid-19 orders. Police allege Mr Tamaki: (a) organised a protest at Auckland Domain 2 October 2021; (b) attended (a); (c) attended a second Domain protest 16 October 2021; and (d) attended a third Domain protest 20 November 2021. Large outdoor gatherings were then prohibited by Covid-19 orders.

[2] Mr Tamaki does not deny attending (b), (c) or (d). He could not—he was videoed at each and some footage made news. However, Mr Tamaki denies intentionally breaching any Covid-19 orders. He denies the charges.

[3] On 17 January 2022, Mr Tamaki was remanded in custody. This because: (i) charges in relation to (c) and (d) arose while Mr Tamaki was on bail for (a) and (b); and (ii) in alleged contravention of his conditions of bail, Mr Tamaki attended Hagley Park, Christchurch, 8 January 2022, during a protest there.

[4] On 27 January 2022, Davison J granted Mr Tamaki bail subject to a 24-hour curfew. The Judge concluded the curfew would “mitigate the risk of ... offending while on bail”.¹

[5] Mr Tamaki applied to vary his bail to permit a family holiday between 14 and 23 March 2022. Mr Tamaki proposed to visit Gisborne and Rotorua. Judge P J Sinclair declined the variation 11 March 2022 because of risk of re-offending.

[6] Mr Tamaki appeals Judge Sinclair’s decision on the basis circumstances have changed.

[7] Mr Mansfield QC contends Mr Tamaki poses no material offence risk because that alleged is *exclusively* directed at outdoor gatherings; and restrictions of these *ended* midnight, 25 March 2022. So, Mr Mansfield contends, even if Mr Tamaki were minded now to attend a large outdoor gathering, he could not, in so-doing, commit any Covid-19-related offence.² It follows things have changed fundamentally since

¹ *Tamaki v Police* [2022] NZHC 41 at [35].

² Mr Tamaki has undertaken he will not attend or speak at any political gathering ala Covid-19.

11 March 2022 and Mr Tamaki should be able to holiday at Rotorua, Gisborne and Hastings between 16 and 29 April 2022.

[8] On behalf of Police, Mr Dickey responsibly acknowledges the unusualness of the situation: an error-free decision overtaken by events.

[9] Mr Mansfield's logic is unassailable. That Mr Tamaki may holiday is *not* because a defendant may ordinarily do so while on bail. Rather, because the landscape informing Mr Tamaki's bail conditions has changed since they were imposed.

[10] The appeal is allowed. Bail is granted on the conditions proposed.

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Downs J