

Court Limits Ruling To New Convictions

For the second time in two years the Supreme Court has declared that prisoners long since convicted cannot benefit from a newly declared constitutional right.

By a 5-to-2 vote the Court held that a prisoner cannot belatedly attack his conviction at a state trial during which a prosecutor called attention to his failure to take the witness stand.

The right to be free from the prosecutor's comment, long a Federal trial guarantee, was declared last April 28 as part of the Federal self-incrimination privilege, which the Court held binding on the states.

Limited to Future Cases

In limiting the prosecutor's comment rule to future cases, the Court said it was following principles laid down last year, when the Couryru fused retroactive application to the rule excluding illegally seized evidence from state trials.

Justice Potter Stewart said application of the comment rule to cases already closed permitted comment before 1965: Ohio, California, Connecticut, Iowa, New Jersey and New Mexico.

He said states had relied on the old rule allowing comment for 57 years before the Supreme Court changed it. Stew-

art, who dissented when the rule was changed last year, added that the self-incrimination privilege did not go to the heart of the trial's guilt-finding process.

Attorney Convicted

The case involved Edgar I. Shott Jr., a Cincinnati attorney who was convicted of securities fraud after a prosecutor made much of his exercise of the constitutional right not to testify. Shott, whose last appeal was turned down in 1963, did not raise the comment issue until the Supreme Court extended Fifth Amendment protections to the states.

Justices Hugo L. Black and William O. Douglas dissented. Not participating were Chief Justice Earl Warren, who prosecuted cases in California under the old rule, and Justice Abe Fortas, whose former law partner, Thurman Arnold, represented Shott.

In another case the Court struck down as a violation of due process of law Pennsylvania's 105-year-old law that allowed juries in misdemeanor cases to acquit a defendant and then assess court costs against him.