

Limit Set by Court On Free Legal Aid

The Supreme Court yesterday reversed a decision that would have expanded the rights of indigent prisoners for counsel to handle appeals.

Justice William H. Rehnquist said in the majority opinion that an indigent was "somewhat handicapped in comparison with a wealthy defendant who has counsel" but the state has no duty "to duplicate the legal arsenal that may be privately retained by a criminal defendant."

The 6-to-3 majority agreed with Judge Clement F. Haynsworth Jr.—accused by some critics of short-sightedness when he was rejected as a high-court nominee in 1969—that state-financed legal aid would be helpful at every stage of the appeal process, but disagreed over whether the Constitution required it.

Haynsworth, citing "changing times" and developing concepts of fairness and equality under the law, said indigents must have free counsel when trying to persuade a higher court to hear a case. The Supreme Court had left the issue open since 1963, when it applied its free-counsel rules to appeals taken as a matter of right.

Haynsworth wrote last year for a unanimous panel

of the Fourth U.S. Circuit Court of Appeals, of which he is chief judge, in a habeas corpus case filed by Claude F. Moffitt, convicted of forgery in North Carolina. The decision would have affected Virginia and Maryland, which are part of the circuit.

Virginia joined North Carolina in seeking yesterday's reversal. Public defenders in Maryland expressed concern that the ruling would move their budgets higher.

Haynsworth said that constitutional rights were expanding. "What is requisite today may not have been constitutionally requisite 10 years ago, or even a few years ago, he wrote.

The need for counsel may be greater when the reviewing court must be persuaded that the case is worthy of review than in ordinary cases because of the subtlety of the task, Haynsworth said.

Joining Rehnquist in the Supreme Court's majority opinion were Chief Justice Warren E. Burger and Justices Potter Stewart, Byron R. White, Lewis F. Powell Jr. and Harry A. Blackmun. (Blackmun was named in 1970 to the vacancy for which Judge Haynsworth was nominated and defeated.) Dissenting were Justices William O. Douglas, William J. Brennan and Thurgood Marshall.